LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
DEC 13 1952

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 274

CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, a Corporation, et al.,

Appellants,

vs.

EDWARD J. BARRETT as Secretary of State of the State of Illinois, et al.,

Appellees.

Appeal From The Supreme Court of the State of Illinois.

BRIEF FOR CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, A CORPORATION, ET AL., PLAINTIFFS-APPELLANTS.

SAM ALSCHULER,
FRANK R. REID, JR.,
RALPH C. PUTNAM, JR.,
ROBERT B. HUPP,
WILLIAM C. MURPHY,
Attorneys for Appellants.

PUTNAM, JOHNSON & ALSCHULER,
32 Water Street,
Aurora, Illinois.
REID AND OCHSENSCHLAGER,
6 Downer Place,
Aurora, Illinois,
Of Counsel.

INDEX TO THE SUBJECT MATTER.

	PAGE
Opinion and Report Below	1
Jurisdiction	1
Statement of the Case	3
Specification of Errors to be Urged	7
Summary of Argument	10
Argument:	
I. The 1951 amendment imposes an undue burden on interstate commerce in violation of Section 8, Article I and Section 1, Amendment XIV of the Constitution of the United States.	16
A. The tax bears no reasonable relation to the privilege of using the highways of the State of Illinois.	16
B. The tax is excessive in amount.	38
II. The taxes imposed by the 1951 amendment are confiscatory and violate Section 1 of Amendment XIV to the Constitution of the United States.	46
III. The 1951 amendment contains numerous arbitrary, inconsistent, vague and uncertain classifications in violation of Section 1, Amendment XIV of the Constitution of the United States.	64
Conclusion	76

PAGE

Appendix A—An Act to Amend Sections 9, 11 (a) and 20 and to repeal Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k) and 9 (l) of the 'Motor Vehicle Law', approved June 30, 1919 as amended. 77

Table of Cases.

Aero Mayflower Transit Co. v. Georgia Public Service Comm., 295 U.S. 285 ..... 20, 40

Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332 U.S. 495 ..... 20, 40

Bode v. Barrett, 412 Ill. 204, 106 NE 2d 521 52

Bonsteel v. Allen, 83 Fla. 214, 91 So. 104 48

Capital Greyhound Lines v. Brice, 339 U.S. 542 ..... 18, 19, 20, 21, 22, 23, 37, 38, 41, 44, 45

Case-Fowler Lumber Company v. Winslett, 168 Ga. 808, 149 S.E. 211 75

Clark v. Gray, 306 U.S. 583 19

Clark v. Poor, 274 U.S. 554 ..... 39, 40

Co-Ordinated Transport, Inc. v. Barrett, 412 Ill. 321, 106 NE 2d 510 1

Continental Baking Co. v. Woodring, 286 U.S. 352 ..... 25, 69

Dane v. Jackson, 256 U.S. 589 46

Dixie Ohio Express Co. v. State Rev. Comm., 306 U.S. 72 40

Fiscal Court of Owen County v. F. & A. Cox Co., 132 Ky. 738, 117 S.W. 296 ..... 53, 59

Frost v. Corp. Comm. of Oklahoma, 278 U.S. 515 67

PAGE

Grennan v. Sheldon, 401 Ill. 351, 82 NE 2d 162 68

Gulf, C. & S. F. R. Co. v. Ellis, 165 U.S. 150 .....65, 69

Hendrick v. Maryland, 235 U.S. 610 .....39, 40, 43

Hicklin v. Coney, 290 U.S. 169 39

Ingels v. Morf, 300 U.S. 290 .....17, 19

Interstate Busses Corp. v. Blodgett, 276 U.S. 245 40

Interstate Transit, Inc. v. Lindsey, 283 U.S. 183 ....16, 36,39

Kane v. New Jersey, 242 U.S. 160 .....39, 40

Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699 48

McCarroll v. Dixie Greyhound Lines, Inc., 309 U.S. 176 .....18, 20, 21, 36

Morton Salt Co. v. City of South Hutchinson, 159 F. 2d 897 48

Nichols v. Coolidge, 274 U.S. 531 56

Ohio Tax Cases, 232 U.S. 576 47

People v. Brown, 407 Ill. 565, 95 NE 2d 888 59

People v. Kastings, 307 Ill. 92, 138 NE 269 62

People v. Wilson, 249 Ill. 195, 94 NE 141 58

Price v. The People, 193 Ill. 114, 61 NE 844 58

Prouty v. Coyne, 55 F. 2d 289 .....17, 36, 41

Sprout v. South Bend, 277 U.S. 163 .....16,36, 39

State v. Kartus, 230 Ala. 352, 162 So. 533 47

State v. Lucas, 196 La. 299, 199 So. 126 55

Truax v. Corrigan, 257 U.S. 312 66

Tyler v. U.S., 281 U.S. 497 56

Union Brokerage Co. v. Jensen, 322 U.S. 202 44

PAGE

CONSTITUTION OF THE UNITED STATES.

Section 8 of Article I 16, 46

Section 1 of Amendment XIV 16, 46, 64, 65, 76

STATUTES.

Ill. Rev. Stats., 1951, Ch. 95½, Sec. 9 et seq 2

Title 28 U.S.C. Sec. 1257 (2) 2

OTHER CITATIONS.

33 Amer. Jur. 366 53

11 Amer. Jur. 1147 56

51 Amer. Jur. 98 61

37 C.J. 194 53

Eastman, Public Aids to Transportation, Vol. 4, P. 149 25

Griffenhagen & Associates, A Highway Improvement Program for Illinois, Nov. 1948 ..... 13, 44, 45

MacDonald, Hearings before Subcommittee of Senate Committee on Interstate and Foreign Commerce, pursuant to S. Res. 50, June 27, 1950, Part VII 27

St. Clair, Suggested Approaches to the Problems of Highway Taxation 26

Webb, Public Aids to Domestic Transportation, Board of Investigation and Research, P. 18 September 19, 1944, House Document No. 159 26

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 274

CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, a Corporation, et al.,

Appellants,

vs.

EDWARD J. BARRETT as Secretary of State of the State of Illinois, et al.,

Appellees.

Appeal From The Supreme Court of the State of Illinois.

BRIEF FOR CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, A CORPORATION, ET AL., PLAINTIFFS-APPELLANTS.

Opinion and Report Below.

The opinion of the Supreme Court of Illinois (R. 316-324) is reported in 412 Ill. 321, 106 NE 2d 510.

Jurisdiction.

On January 15, 1952 the Circuit Court of Kane County, Illinois entered a decree finding that an act of the General Assembly of the State of Illinois entitled "An Act to Amend

Sections 9, 11 (a) and 20 and to repeal Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k) and 9 (l) of the 'Motor Vehicle Law,' approved June 30, 1919 as amended," (Ill. Rev. Stats. 1951, Chap. 95½, Sec. 9, et seq.) was repugnant to the Constitution of the United States, (R. 34).

Said decree was appealed to the Supreme Court of Illinois by the defendants.

On June 4, 1952 the Supreme Court of Illinois entered an order reversing and setting aside said decree and its decision was in favor of the validity and constitutionality of said statute. (R. 325)

On July 15, 1952 a petition for appeal was presented to the Honorable Sherman Minton, one of the Justices of this Court (R. 326), and on said date he entered an order allowing said appeal. (R. 332)

On October 13, 1952 an order was entered herein noting probable jurisdiction of the cause and transferring the cause to the summary docket. (R. 336)

The jurisdiction of this court is invoked under Sub-section (2) of Section 1257 of Title 28 of the United States Code.

STATEMENT OF THE CASE.

The 67th General Assembly of the State of Illinois passed an act approved by the Governor of Illinois on July 9, 1951 entitled "An Act to Amend Sections 9, 11 (a) and 20 and to repeal Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k) and 9 (l) of the 'Motor Vehicle Law,' approved June 30, 1919 as amended," a copy of which act is attached hereto as Appendix "A".

Plaintiffs-appellants (hereinafter referred to as "appellants") most of whom were engaged in interstate commerce, filed a complaint in the Circuit Court of Kane County, Illinois, to enjoin the enforcement of said statute and to have said statute declared unconstitutional. (R. 1) The complaint charged that said statute was repugnant to and violated the provisions of Section 8 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

The defendants-appellees (hereinafter referred to as "appellees") filed an answer (R. 2) denying the allegations of the complaint, and evidence was introduced by both parties.

The issue in the case is the constitutionality of this 1951 amendment to the Motor Vehicle Law. Appellants' position is that the tax imposed by said act constitutes an undue burden upon interstate commerce and is a discrimination against interstate commerce and is greatly in excess of a fair contribution from the appellants, and all others in the same class, for the privilege enjoyed by them of using the highways of the State of Illinois and is in violation of the constitutional provisions referred to.

Appellants' further position is that the statute is confiscatory, arbitrary and void in violation of said constitutional provisions and that it denies to the appellants and

others similarly situated the equal protection of the laws in violation of said constitutional provisions.

The evidence consisted of testimony by numerous persons in the industry as to the effect of said act on the truck industry, the testimony of a truck expert, the testimony of bankers, the testimony of a transportation expert and the testimony of officials of the State of Illinois. The undisputed evidence showed that the truck license fees were tremendously increased. For example, under the old schedule a truck which paid $420.00 per year, under the new act will pay in 1954 a tax of $1588.00. The undisputed evidence showed that the taxes of one of the parties would be increased as much as 2000% (R. 54). Appellants also offered the testimony of Professor John S. Worley, a recognized leader in the field of highway engineering and administration, which revealed that the ton-mile theory as applied by the authors of this tax was so fundamentally unsound as to be excessive in some classifications by as much as 300% and patently arbitrary and discriminatory. (See Plaintiffs' Exhibit 16; R. 275; offered at R. 133). Throughout his analysis Professor Worley proceeded on the assumption that the total revenue sought under the 1951 Act was reasonably required to meet state highway needs (R. 127), and appellants did not question the estimate of needed revenue for road purposes which the state made. Appellants did, however, vigorously attack the formula upon which the registration fee schedule for raising the estimated required revenue was based.

Professor Worley testified that numerous items of highway cost have no relation to the weight of the vehicles passing over the highways. Costs such as grading, fencing, signs, signals, landscaping, roadside parks, right-of-way, diversion of funds to other uses than highway uses, are not affected by the weight of vehicles passing over state roads (R. 128). Other costs, on the other hand, are related wholly or partly to the vehicular weight of traffic

(R. 129). Under this common-sense distinction, some 60% of highway costs is not affected by weight, while 40% is (Plaintiffs' Exhibit 14; R. 271; offered at R. 133).

Appellees' witness did not deny that some highway costs were not affected by weight, but stated that they could not be accurately measured (R. 189). Appellees' exhibit 7 (R. 307; offered at R. 195) in support of the 1951 Act fee schedule shows that weight (expressed in terms of "ton-miles") was the criterion in distributing highway costs among the various classes of trucks. For comparison with appellees' exhibit 7, Professor Worley prepared six corresponding exhibits (appellants' exhibits 11-16, incl.) (R. 265-275; offered at R. 133) in which the various items of highway cost are broken down into those costs affected by weight and those not affected by weight; that portion of total highway costs affected by weight was then distributed back among the vehicle classifications on a ton-mile basis, and that portion not affected by weight was distributed back on a vehicle-mile basis. The resultant tax schedule appears in appellants' exhibit 15 (R. 273; offered at R. 207).

Seventeen truck operators testified that the tax increase would exceed their net profits for the year 1950 or would eliminate their profit to the extent that they could not make a fair return on their invested capital. These witnesses included every type of carrier: line haul, short haul, contract, local and private haulers, interstate, intrastate operators, and truck broker. These witnesses, moreover, were owners and operators of all types of equipment.

In addition, two officials of banks which heretofore had engaged heavily in truck financing testified that they had already substantially curtailed their truck loans because of the greatly increased tax and its consequent effect in making truckers unable to pay for their equipment. The appellees introduced no testimony to contradict or ques-

tion appellants' testimony as to the confiscatory effect of this Act on the truck industry in Illinois.

Appellees' testimony consisted primarily of the testimony of Mr. Frank N. Barker, Chief Highway Engineer of the State of Illinois, and the introduction of two exhibits which were prepared in his department under his supervision and direction.

Defendant's exhibit 7 (R. 307; offered at R. 195) showed the different classes of motor vehicles registered in 1949, the average miles travelled each year by each class of vehicle, the number of gallons of gasoline consumed by all vehicles, the number of gallons multiplied by a five cent gas tax rate, and the average weight of all vehicles.

From the above data was computed the ton-miles travelled annually by each class of vehicles, the motor fuel tax per ton-mile for each class (at a 5¢ rate), the 1949 license fee per ton-mile paid by each class, and the total fees per ton-mile paid by each class under the old motor vehicle act but with a motor fuel tax of 5¢ a gallon. Thereafter a computation was made of the additional fees per ton-mile which would be required to equalize the tax payments per ton-mile by trucks and busses with the tax payments per ton-mile made by passenger cars. These additional fees were added to the 1949 license fees for the various classifications and the total was called the "License Fee as Equalized" i.e., equalized to the ton-mile fee paid by passenger cars in 1949. These license fees last computed were shown to correspond almost exactly with the license fee schedule contained in the 1951 Act and Barker testified that they were the basis of the 1951 Act.

Witness Barker explained that this exhibit had been based on the ton-mile theory which he stated has general support among highway engineers and was considered a valid theory of cost allocation by the State Division of Highways. In the opinion of witness Barker, the theory

adopted in plaintiffs' Exhibits 11-16 (R. 265-275; offered at R. 133) was sound (R. 193), but it was his opinion that highway costs affected by weight and those costs not affected by weight cannot be accurately measured (R. 189).

Defendants' Exhibit 2a (R. 293; offered at R. 158) was introduced by appellees and showed an estimate made by the Illinois Division of Highways, of the State's needs to meet present and future deficiencies of the Illinois primary highway system for the ten-year period from 1951 to 1960. The amount stated was $1,151,041,232.00. Defendants' exhibit 2b (R. 294; offered at R. 158) was an estimate made by the State Division of Highways of the funds available with the challenged statute in force for State highway construction during that ten-year period. The amount was $676,961,887.00.

On January 15, 1952 the Circuit Court of Kane County, Illinois, entered a decree finding that said act violated said constitutional provisions and holding said act unconstitutional (R. 34).

The appellees appealed to the Supreme Court of Illinois and on June 4, 1952 that court reversed the order of the Circuit Court of Kane County, Illinois and held said act to be constitutional (R. 325).

Specifications of Errors to be Urged.

The Supreme Court of Illinois erred:

1. In holding that said statute does not impose an undue burden on interstate commerce, in violation of Section 8, Article I, and Section 1, Amendment XIV of the Constitution of the United States, and in holding that the amount of the tax is not in excess of the fair and reasonable compensation for the privilege of using the state highways.

2. In ignoring the evidence that approximately 60% of the cost of constructing and maintaining the high-

ways and regulating the traffic thereon was not attributable to the weight of vehicles passing over them, and that the licensing fee schedule in question, based solely on weight, resulted in a tax, insofar as the heavier vehicles were concerned, that was discriminatory, and greatly in excess of a fair or reasonable compensation for the use of the state roads. This violates Section 8 of Article I and Section 1, Amendment XIV of the Constitution of the United States.

3. In sustaining the validity of the statute imposing an annual tax as large in amount as the Illinois tax (maximum $1588.00) where the statute does not contain an alternative tax based on mileage actually traveled. This was contrary to Section 8 of Article I of the Constitution of the United States.

4. In holding that the constitutionality of a tax of this nature must be judged by its result, not its formula, and must stand unless the aggregate amount is shown to be in excess of fair compensation for the privilege of using state roads. This is error because it does not take into account the question of discrimination between different sizes of trucks and is contrary to the provisions of Section 8 of Article I of the Constitution of the United States.

5. In holding that the taxes imposed by the amended act have a reasonable basis. This is in violation of Section 8 of Article I of the Constitution of the United States.

6. In holding that the state may impose a tax so great in amount as to put out of business and confiscate a lawful industry, contrary to Section 1 of Amendment XIV of the Constitution of the United States.

7. In ignoring the evidence that the tax imposed by the amending act was confiscatory as to whole segments of the truck industry. This was contrary to Section 1 of Amendment XIV of the Constitution of the United States.

8. In holding that the act does not tax the heavier and more efficient trucks in excess of fair or reasonable com-

pensation for the privilege of road use. This violates Section 8 of Article I of the Constitution of the United States.

9. In holding that the operation of the act was not discriminatory against the heavier and more efficient trucks and in favor of passenger cars and lighter vehicles. This violates Section 1 of Amendment XIV of the Constitution of the United States.

10. In holding that the said act did not contain numerous arbitrary, inconsistent, vague and uncertain classifications, in violation of Section 1, Amendment XIV of the Constitution of the United States.

11. In overruling the contention of the appellants that the operation of the act was discriminatory by reason of the fact that it was based on the then existing tax rate for passenger cars to which rate all other license fees were equalized. This holding is in violation of Section 8 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

12. In denying appellants' contentions that the operation of the law and the omission of classes of vehicles, the creation of a class operating in a municipality "or a close radius thereof"; without defining the terms, basing the tax on "maximum load", without defining the same, and the creation of other confusing and indefinite classifications constituted denial of due process and equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States.

13. In failing to hold the amendatory act unconstitutional and void, as contrary to the Fourteenth Amendment to the Constitution of the United States.

14. In failing to hold the amendatory act unconstitutional and void, as contrary to Section 8, Article I and Section 1, Amendment XIV of the Constitution of the United States.

SUMMARY OF ARGUMENT

I A

The 1951 Amendment imposes an undue burden on interstate commerce in violation of Section 8, Article I and Section 1, Amendment XIV of the Constitution of the United States. The tax bears no reasonable relation to the privilege of using the highways of the state of Illinois.

This court has held in many cases that in order for a tax of this nature to be constitutional the tax formula must have a rational basis. The tax formula involved here does not have a rational basis because it is based on the premise that all highway costs are related to the weight of the vehicles passing over the highway. The tax schedule is founded upon weight and as the weight of the vehicle increases the tax increases.

No attempt was made to allocate the various items of highway costs between those costs affected by the weight of the vehicle passing over the highway and those costs which were not affected by weight. Many highway costs have nothing to do with the weight of the vehicle passing over the highway. Costs such as those for the installation and maintenance of traffic lights, for grading, fencing, signs and signals, culverts, landscaping, roadside parks, excavation and abutments, piers, right of way and diversion of funds have no relation whatsoever to the weight of vehicles passing over the highway. Other costs such as administrative expense, construction, maintenance, interest, are only partially affected by the weight of the vehicles passing over the highways. Even the Chief Highway Engineer of the State of Illinois admitted that this theory was sound but stated that it was not possible in his opinion to make an allocation between costs due to weight and costs not due to weight.

The following factors were not considered in framing this tax schedule:

1. Traffic density is a more influential factor in some of the important highway costs than has been the use of highways by a relatively small number of heavy vehicles.

2. Passenger vehicles contribute to the cost of construction by such factors as present day high rate of speed, need for improved safety control, convenience, and roadside developments.

3. Highway construction and maintenance are influenced by a number of weather and natural factors that have nothing to do whatsoever with the weight of the vehicle.

4. Vehicle size has some influence on highway widths, however, there are other influences on width such as speed, traffic density and driving habits.

5. A large part of maintenance costs is entirely independent of traffic.

6. Large vehicles create, to some extent, hazards and cause congestion, but passenger cars being so much greater in number contribute to these traffic problems to a much larger degree than do the large vehicles.

Professor Worley concluded that approximately 40% of all highway costs are due to weight and 60% are not due to weight.

The 1949 report of the Division of Highways of the State of Illinois sets forth the amounts spent for maintenance and operation for that year and sets forth the percentage that each item bore of the total cost. This corroborates the testimony of Professor Worley that 66.7% of costs of maintenance were not due to weight.

After making a conservative allocation of highway costs between that percentage affected by weight and that per-

centage not so affected, Professor Worley distributed back the portion of total highway costs attributable to weight among the various vehicle classifications on the ton-mile basis, and that portion of highway costs not attributed to weight was distributed back amongst the vehicle classification on the vehicle mile basis. These were added together, revealing the total contribution each vehicle should make to the total highway cost. The gasoline tax per vehicle was subtracted therefrom and the difference was determined to be the proper registration fee for such class of vehicle.

The tax under the 1951 act was based on the ton-mile theory. This theory purports to establish the cost of moving one ton one mile. It is misapplied here because, as stated above, many of the costs of constructing and maintaining highways are not related to the weight of the vehicle passing over the highway.

When the considered judgment of leading highway engineers is that a substantial percentage of highway costs have nothing to do with weight, a taxing theory which fails to take that fact into account, cannot be said to produce a tax schedule which bears a relation to the value of the use of the highways to the various classifications of vehicles.

While scientific accuracy is not essential in preparing a tax schedule such as this, a schedule which is founded upon a formula as faulty as the one involved in the 1951 Amendment, fails to show a reasonable relationship between the tax and the privilege of using the highway, and is unconstitutional. The taxes assesed in some instances are as much as 300% in excess of a fair and reasonable fee.

I B

The tax is excessive in amount. Neither this court nor any state appellate court has ever maintained any tax near-

ly as high as the tax involved here. In many cases this court has held that a tax of this nature must be reasonable in amount.

Under the tax schedule in question a single truck may have to pay in 1954 an annual tax of $1,588.00. Many of the plaintiffs will be subjected to new annual taxes or fees in an amount in excess of the net income they realized in 1950. In one instance this increase will be an increase of over 2000% in the amount of the tax to be paid. The optional provision for basing the tax on the miles actually traveled has been eliminated so that these huge taxes are assessed against the owners of vehicles who may drive them only a few miles over Illinois highways per year.

Griffenhagen and Associates is an engineering firm that was employed by the Highway Department of the State of Illinois. They conducted a very extensive survey extending over a period of two years and recommended a schedule of taxes to be adopted. Under the Griffenhagen recommendation the schedule of fees to be paid by trucks was increased but the Illinois legislature completely disregarded the Griffenhagen recommendations and enacted a bill which in some instances doubled the fees recommended. Such a tax is excessive in amount and imposes an undue burden on interstate commerce in violation of Section 8, Chapter 1 and Section 1, Amendment 14 of the Constitution of the United States.

II.

The undisputed evidence discloses that every trucker who testified in this case will be obliged under the 1951 amendment to the Illinois Motor Vehicle Act to pay annually in license fees more than his 1950 net income, or so much that the remaining net income would not produce a fair return on the capital invested in the witnesses' businesses, and that these increased fees cannot be passed

on to their customers. Since these witnesses constituted every type of truck operator, the testimony is indicative of the effect of the tax schedule on the entire truck industry in Illinois. The Courts have uniformly held that taxes which confiscate legitimate useful businesses violate the equal protection and due process clauses of the Fourteenth Amendment. Moreover, even if it might be argued that the Illinois Act is regulatory as opposed to revenue producing it has been held that a legislature, under the guise of taxation, may not prohibit a useful business that it cannot prohibit directly. Therefore, it follows that since the tax confiscates all, or a large segment of the trucking industry in Illinois, and since this industry is useful and, indeed, necessary to our economy, the tax levied deprives the truck owners of their right to earn a living in a legitimate business and thus deprives them of their liberty and their right to enjoy life and to acquire property contrary to the guarantees of the Fourteenth Amendment.

III.

The 1951 amendment contains numerous arbitrary, inconsistent, vague and uncertain classifications in violation of Section 1, Amendment XIV of the Constitution of the United States. This court has frequently held that although the legislature has power to classify, such classification cannot be arbitrary or without rational basis. There must be reasonable basis for differentiation and that differentiation must serve the purposes of the statute. The classifications in the schedule are inconsistent and lack uniformity. As pointed out heretofore the schedule is based solely on weight. Yet under the classifications involved, in some instances, the owners of heavier vehicles pay less than the owners of lighter weight vehicles, and vehicles of a given weight having fewer wheels pay less than the owners of vehicles of the same weight having more wheels. The testimony was undisputed that the greater the number of

wheels on a vehicle, the more the load is distributed on the highway, and the less damage will be done to the highway.

The act discriminates against trucks in favor of busses used for transporting more than seven passengers entirely within the territorial limits of a single municipality, or a single municipality and municipalities contiguous thereto or a close radius thereof, and equipped with hydraulic shock absorbers and whose rates are subject to the Illinois Commerce Commission. Numerous witnesses testified that their trucks operated entirely within the territorial limits of a single municipality and that some or all of their trucks were equipped with hydraulic shock absorbers. They testified that they operate each such truck from three thousand to ten thousand miles per year. The evidence showed that the average bus travels well in excess of thirty thousand miles a year. Although the bus makes much greater use of the highway than do such trucks, such trucks pay a fee many times that of a bus of the same gross weight.

The terms "maximum load" and "gross weight" which are the basis for the license fees are capable of many interpretations and are vague and uncertain.

The term "like exemptions and privileges" is vague and uncertain. The terms, municipality and "a close radius thereof" and "agricultural pursuits" are vague, indefinite and uncertain and offer no basis for a reasonable classification and result in unconstitutional discrimination.

ARGUMENT.

I.

The 1951 amendment imposes an undue burden on Interstate Commerce in violation of Section 8, Article I and Section 1, Amendment XIV of the Constitution of the United States.

A.

The tax bears no reasonable relation to the privilege of using the highways of the State of Illinois.

Section 8, Article I, U.S. Constitution provides:

> "The congress shall have power . . . to regulate commerce with foreign nations and among the several states . . ."

Section 1, Amendment XIV, U. S. Constitution provides:

> " . . . No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

This court has decided many times that a tax of this character is unconstitutional if it bears no reasonable relation to the privilege of using the highway.

In *Sprout* v. *South Bend*, 277 U.S. 163, a tax on busses based on seating capacity was held invalid, Mr. Justice Brandeis stating at p. 170:

> "A flat tax, substantial in amount and the same for busses plying the streets continuously in local service and for busses making, as do many interstate busses, only a single trip daily, could hardly have been designed as a measure of the cost or value of the use of the highways."

In *Interstate Transit, Inc.* v. *Lindsey*, 283 U.S. 183, a tax on busses based on earning capacity was held to violate the

commerce clause of the Federal Constitution, and to be invalid, Mr. Justice Brandeis stating at p. 190:

> "Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the state. *Clark* v. *Poor*, 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, *supra*. In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the state. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except in so far as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses. We need not therefore consider whether the tax exacted from this appellant is unreasonably large or unjustly discriminatory."

In *Ingels* v. *Morf*, 300 US 290, this court held a "caravan" tax of $15.00 levied by the State of California to be unconstitutional where the evidence showed that the cost of regulation was $5.00, stating on p. 297:

> "The administrative expense of issuing the permits appears not to have been included, but the testimony that that expense was about $5.00 per car does not bridge the arithmetical gap, and does not impeach the court's conclusion that the permit fee bears no reasonable relation to the total cost of regulation, to defray which it is collected. It rightly held that the licensing provisions of the statute impose an unconstitutional burden on interstate commerce."

In *Prouty* v. *Coyne*, 55 F 2d 289, the court held the South Dakota license fee invalid as to interstate carriers which was based on the greater of manufacturer's weight of chassis or actual chassis weight, because it did not de-

pend on mileage traveled or tonnage carried. The court stated on p. 293:

> "In the instant case, it appears from the face of the act that the avowed purpose of the tax was for compensation for the use of the highways. This being true, the burden of proof was upon the plaintiffs to show that the tax bears no reasonable relation to the privilege of using the highways, or is unreasonably discriminatory. To sustain the act as a burden on interstate commerce, three things must appear: First, that the tax was levied only for compensation for the use of the highways; second, that the tax as levied bears a reasonable relation to the privilege of using the highways; and, third, that it is not unreasonably discriminatory."

In *McCarroll* v. *Dixie Greyhound Lines, Inc.*, 309 U.S. 176, a tax was levied on all gasoline over 20 gallons carried in tanks of motor vehicles into the state of Arkansas. This court held this tax to be unconstitutional on the ground that this formula bore no reasonable relation to road use. The court stated at p. 181:

> "It must appear on the face of the statute or be demonstrable that the tax as laid is measured by or has some fair relationship to the use of the highways for which the charge is made."

Appellees contended below that the recent case of *Capital Greyhound Lines* v. *Brice*, 339 U.S. 542, establishes the proposition that whether a tax is constitutional or not must be judged by its result, not its formula, despite a long line of authority to the contrary. We do not believe that any such unqualified proposition is found in the *Brice* case. The *Brice* case on its facts was unique in several respects. It involved a Maryland titling tax of 2% upon the fair market value of vehicles used in interstate and intrastate commerce. Compare this tax with the Illinois Tax. Suppose the 59,000 pound truck is worth $10,000. Under the Maryland Act the tax would be 2% of $10,000, or $200, while under

the Illinois law the tax is $1,588. annually. The Maryland tax was not imposed annually or periodically but only at the issuance of the original and each subsequent certificate of title. If the Illinois tax were only as oppressive as the Maryland tax, we would not be before this court.

The interstate carriers challenging the act in the *Brice* case did not attack it on the ground that the amount of the tax was in excess of fair compensation for the privilege of road use. Appellants here do so challenge the Illinois Act (see Argument IB). The challenge in the *Brice* case was levelled at the formula alone. The situation in the *Brice* case is further rendered unique in that Maryland also charged mileage tax for the privilege of road use.

That the majority opinion in the *Brice* case did not mean to overthrow the solid line of cases requiring not only that the tax exaction be related to the value of the privilege of road use, but also that it have a rational basis, is evident from the citation of two of those cases in the majority opinion. Cited in the opinion was *Clark* v. *Gray,* 306 U.S. 583, in which case the court upheld the California caravan act of 1937, imposing two license fees, each of $7.50, for six months permit for caravaning a car driven into that State; the court there found that the tax was not "without rational basis" or excessive. Also cited in the *Brice* case was *Ingels* v. *Morf,* supra, wherein a previous California caravan tax of $15 per car was held unconstitutional where the evidence showed that the attendant cost to the state was only $5 per vehicle.

It is again worth noting that these and the other leading cases cited in the *Brice* case involved fees and taxes which the court was careful to describe as "moderate," "reasonable" and which in many instances were but nominal charges.

The *Brice* case cannot properly be construed to hold that the sole test of constitutionality is the aggregate amount of

tax collected, entirely divorced from the tax formula. To so hold would be to logically conclude that any taxing scheme is constitutional which yields no more than the sum desired by the taxing state for road purposes; in that event, no motor vehicle tax is attackable except by proof that the tax will yield more revenue than the State estimates that it should have at its disposal. The State might include within its estimate any number of projects and it would not be possible for a taxpayer to say that the projects were not necessary or desirable.

To judge constitutionality strictly in terms of result without regard to formula, is to say that a passenger car may be charged a registration fee ten, or even a hundred, times as much as that charged a 40,000 pound truck. Carried to its logical conclusion, any such proposition would validate a taxing scheme that imposed the entire tax burden on trucks weighing, say, 3,000 to 8,000 pounds and permitting all other vehicles to be tax-exempt. Certainly nothing in *Aero Mayflower Transit Co.* v. *Georgia Public Service Comm.*, 295 U.S. 285, or *Aero Mayflower Transit Co.* v. *Board of Railroad Commrs.*, 332 U.S. 495, or *Capital Greyhound Lines* v. *Brice*, (*supra*), supports the proposition that the tax formula may be unreasonable, discriminatory, arbitrary or capricious. The *Lindsey* case specifically holds that the tax must not be discriminatory if it is to be constitutional.

The case of *McCarroll* v. *Dixie Greyhound Lines, Inc.*, (supra) is one in which a vehicle tax was invalidated *for the very reason that the tax formula was without rational basis.*[1] The statute was held unconstitutional simply because the standard of measurement of the tax was found to be unrelated to what the State gave; gasoline in the tank of an entering vehicle can have no relation to a fair charge for the privilege of road use. The Arkansas tax was declared to be imposed upon the privilege of highway use and

[1] Italics ours throughout, unless otherwise indicated.

the proceeds were allocated to that purpose. There was no showing that the State was collecting sums in excess of its needs or that the carrier was being subjected to severe economic strain. The defect lay in the arbitrary and unreasonably discriminatory tax formula. The majority opinion quoted with approval the following language from the opinion of the Circuit Court of Appeals below (p. 179):

> "If it is to be sustained at all with respect to gasoline to be used in other states, it must be sustained upon the theory that the *method employed for determining the amount of the tax* constitutes a *fair measure* for ascertaining the compensation which lawfully may be exacted by Arkansas from the appellant for the use which it makes of the highways of the State . . . ".
>
> "While we can understand how the use of state highways by a carrier can be roughly measured by the amount of gasoline which that carrier uses to move its vehicles over the highways, we are unable to comprehend how the use of the highways of one state can appropriately be measured by the amount of gasoline carried in the fuel tank of an interstate carrier for use upon the highways of another state."

The *McCarroll* case was decided in 1940. The *Brice* case was decided in 1950, only *ten* years later. Surely the court had the *McCarroll* case in mind at the time it decided the *Brice* case, and if it had been the intention of the court to overrule the *McCarroll* case the court would have done so expressly. Not having done so, we believe the *McCarroll* case as well as the other cases which preceded it still stand, and it is still the rule that the tax formula must have a rational basis.

Throughout the opinion in the *Brice* case the Court points out that it is relying on prior decisions and adhering to existing rules. In the past, taxes on occasion have been challenged on the basis of their formula alone, and not on the basis of the result. It seems obvious that if a legislature devised a tax schedule based on an improper formula,

or, indeed, based on no formula at all, and that schedule did in fact by chance bear a reasonable relationship to the value of the privilege granted, that tax would be every bit as valid as one based on a reasonable, logical and valid formula. Conversely, if a legislature worked out a complete formula, and produced a tax schedule which bore no relation to the privilege granted, because the formula was improper or was misapplied, that tax schedule should be held invalid. This, we submit, is the situation that exists in the case at bar. Mr. Frank N. Barker, Chief Highway Engineer of the State of Illinois, testified as to the formula used. The testimony of Professor Worley was introduced to demonstrate how palpably improper the result produced by that formula was because the formula was based on weight, and erroneously included many items of cost not related to weight. As the Court said in the *Brice* case at p. 547:

> "Under the rules we have previously prescribed, such carriers may challenge the taxes as applied, and upon proper proof obtain a judicial declaration of their invalidity as applied."

In the trial court the appellees objected to Professor Worley's testimony of the theory that only the legislature had authority to devise the taxing formula, and that at most Professor Worley was suggesting that some other formula might have been used. We submit, however, that Professor Worley's testimony was offered not as a substitute formula for the legislature, but to demonstrate how the formula was misapplied, and as a competent yardstick for the Court to use in determining whether the result was proper, and bore relation to the value of the privilege granted. In the *Brice* case the Court has clearly stated that the Court will determine whether the resulting tax schedule bears a reasonable relationship to the value of the privilege granted without regard to the formula used by the legislature in arriving at that result. Expert testimony, such as that of Professor Worley and such as the authorities cited by him,

which indicate to the Court a reasonable basis of determining the value of the privilege and thus enable the Court to determine whether the resulting tax schedule roughly approximates the value of the privilege, are certainly the "proper proof" to which the Court referred in the *Brice* case. The mere fact that the State Legislature based its tax on a formula is not enough to sustain the tax. We submit that Professor Worley's analysis demonstrates conclusively that the result, the tax schedule, bears no relationship to the value of the privilege granted, being in some classifications as much as 300% excessive, and that following the authority of the *Brice* case and all of the other cases decided, this tax must be held unconstitutional on the basis of its improper result.

The facts herein show that there is no reasonable relation between the Illinois tax and the privilege of using the Illinois highways.

It is apparent from a glance at the tax schedule that the tax greatly increases as the weight of the vehicle increases. The schedule is founded upon weight. Yet it will be clearly demonstrated that there are many factors that have no relation to weight included in the formula.

Professor John S. Worley appeared as a witness for the appellants. He stated that he was Emeritus Professor of Transportation Engineering at the University of Michigan, that he was head of the Transportation Department of the University of Michigan from 1922 until 1947, and had been actively engaged in engineering work in connection with transportation problems for the past thirty years. He testified at considerable length concerning the basis of the 1951 Amendment and defendants' exhibits in support thereof. Professor Worley testified also with reference to six exhibits which he had prepared (plaintiffs' exhibits 11 through 16 incl., R. 265-275; offered at R. 133) which were based for the most part on the same data as in defendants' exhibit 7 (R. 307; offered at R. 195) and for purposes of

comparison were prepared to correspond in form with defendants' exhibit 7. (Defendants' exhibit 7 is the same document, with minor corrections, as plaintiffs' exhibit 17 which is referred to in the record but which was not offered in evidence. R. 188. Throughout this brief this document is referred to as defendants' exhibit 7.).

It is commonly recognized and not disputed in this case that motor vehicles in Illinois, as in many states, pay for the use of the highways in two ways: one, by the payment of a vehicle registration fee, and two by the payment of a gasoline tax.

The testimony of Mr. Frank N. Barker, Chief Highway Engineer of the State of Illinois and a witness for the defendants, was that the tax imposed by the 1951 Act was based on the "ton-mile" theory (R. 186). He pointed out that the ton-mile fee paid by passenger cars in 1949, with a 5¢ motor fuel tax, was used as the standard ton-mile fee in computing the registration fees trucks should pay under the Act in 1952 and in 1954 (R. 186); the registration fees for all classifications of trucks were computed on that basis.

Thus, the authors of the 1951 Act, in devising the tax schedule contained in that statute, started with the assumption that the registration fee presently paid by passenger car owners was proper—proper not only for passenger cars now and in 1954, but proper as the standard ton-mile fee for all trucks. *We use the word "assumption" because defendants introduced no testimony to show that this premise was anything more than an assumption.* On redirect examination Professor Worley testified that the authors of the 1951 tax schedule used the ton-mile basis so that the fees to be paid were equalized to the highest cost per ton mile, i.e., equalized to the ton-mile cost of the passenger car (R. 151). It is clear that, from the standpoint of cost of carrying weight or tonnage over the highways, the passenger car is the costliest and, hence, the least efficient vehicle to operate because the passenger car is built for comfort and

not for carrying freight. Yet, the ton-mile rate of the passenger car was the standard to which all truck registration fees were equalized.

We realize that in *Continental Baking Co.* v. *Woodring*, 286 U.S. 352, this court approved a tax based on ton miles. In that case the tax was based on miles actually traveled and the tax was not attacked on the ground that the amount was unreasonable. In this case the tax is assessed regardless of the miles traveled, and the tax is attacked on the ground that it is excessive in amount. Moreover we are concerned in this case with the way that the ton-mile theory was used in the compilation of this tax schedule, and not with the ton-mile theory generally.

Professor Worley stated that in all his experience he had never known the ton-mile theory to be used as it was used in the preparation of this tax schedule (R. 144). He stated that it was an improper use of the ton-mile theory and investigation of the authorities reveals that this use of the ton-mile theory as a basis for the distribution of the tax amongst highway users has been rejected by prominent tax experts.

Federal Coordinator Joseph B. Eastman, in his report titled "Public Aids to Transportation," (1940), Volume 4, page 149, concluded:

> "On the other hand, the 'gross ton-mile (percent of total)' index used in the 'railroad report' assumes that responsibility for wear and tear is in proportion to the product of gross weight and annual mileage. Since both factors generally increase together, the result is a progressively greater charge against the heavier vehicle. It is felt that such a charge bears little relation to responsibility for maintenance costs. . . .
>
> "The principal merit in basis F (*i.e.*, annual total gross ton-mileage), but one which does not suffice to commend it for use, is its ease of computation. This method gives results which in their general relative

trend and range are quite similar to those found in the railroad report (bases B and C). The complexity of the field of highway costs in itself precludes the possibility of allocating all elements of cost on a single basis. *Also, there is no evidence which convincingly indicates that for every element of cost the charge should progress upwards as weight and mileage of vehicles increase.*"

Mr. R. E. Webb, Chairman of the Board of Investigation and Research, in a report titled "Public Aids to Domestic Transportation," Board of Investigation and Research, page 18, September 19, 1944, House Document No. 159 made the following statement concerning the ton-mile approach to distribution of highway user tax responsibility:

"Although the gross ton-mile approach has (been) the virtue of simplicity, it is not a precise measure of special costs, since 10 automobiles will occupy a great deal more space and will be responsible for more wear than 1 truck with properly distributed wheel load of the same gross total weight. The gross ton-mile unit also tends in the direction of compensation for differential costs, but does so very inaccurately, since (1) wheel load rather than gross load is the major element to be considered in estimating the relative thickness of surface required for vehicles of different size; (2) neither required thickness nor required cost of service varies directly with the load factor; and (3) other added costs are related only vaguely, if at all, to gross weight."

Mr. G. P. St. Clair, of the Bureau of Public Roads, in his "Suggested Approaches to the Problems of Highway Taxation," says:

"The discussion of the gross ton-mile theory given in the preceding section has brought out the fact that gross ton-miles, offered as a measure of the service derived from highway use, is an inadequate measure of such value, and is likely to result in the imposition of excessive taxation upon heavy-weight vehicles."

Commissioner Thomas H. MacDonald of the Bureau of Public Roads in a statement presented in hearings before the Subcommittee of the Senate Committee on Interstate and Foreign Commerce pursuant to S. Res. 50, June 27, 1950, Part VII, stated as follows:

> "The use of gross ton-miles *alone* as a measure of road user tax responsibility is not recommended. There can be no pretense that the gross ton-mile analysis produces an accurate appraisal of the (highway costs) occasioned by vehicles of different sizes and weights."

This ton-mile theory is not an accurate measure of the extent of the use of the highway by motor vehicles.

One truck measuring the maximum distance permitted in Illinois, having a gross weight of 35,000 pounds will occupy only 45 feet of highway space, (Ill. Rev. Stat. 1951, Chap. 95½ P. 224) whereas, it would take 10 automobiles to equal the same gross weight, but such 10 automobiles would occupy 180 feet of highway space.

There is no affirmative proof showing that it costs more to provide highway space of 45 feet under specifications necessary for truck travel than the amount that would be required to build 180 feet of highway space necessary to the present day travel of our heavier and faster automobiles.

The following facts which appear in the testimony of Professor Worley and Mr. Barker have not been considered by the advocates of this 'ton-mile tax theory'.

1. Traffic density is a more influential factor in some of the important highway costs than has been the use of highways by a relatively small number of heavy vehicles (R. 202).

2. Passenger vehicles contribute to the cost of construction by such factors as present day high rate of speed, need

for improved safety control, convenience, and road side developments (R. 193).

3. Highway construction and maintenance are influenced by a number of weather and natural factors that have nothing to do whatsoever with vehicle characteristics (R. 193).

4. Vehicle size has some influence on highway widths, however, there are other influences on width such as the speed, traffic density and driving habits (R. 193; 202).

5. A large part of maintenance cost is entirely independent of traffic (R. 131; 141; 202).

6. Large vehicles create, to some extent, hazards and cause congestion, but passenger cars being so much greater in number contribute to these traffic problems to a much larger degree than do the large vehicles (R. 202).

One passenger car at the present Illinois license fees and motor fuel taxes at the 5¢ rate, can utilize the highways for Fifty-one (51) years or the equivalent of two times the normal average life of our Illinois Highways for the same amount of fees and fuel taxes that the state advocates for the operation of one class "P" truck for one year.

The passenger car being operated for Fifty-one (51) years, based on the averages shown in defendants' exhibit 7 will travel 471,750 miles, while the truck will travel only 36,500 miles. While trucks weigh more and should pay a larger tax than passenger cars, they should not pay ten times as much to go one-tenth as far.

The testimony of Professor Worley was uncontroverted that the theory employed by the draftsmen of the tax schedule in the 1951 Act was this ton-mile theory (R. 144) and that no attempt was made to allocate the various items of highway cost between those costs affected by the weight

of the vehicle passing over the highway and those costs which are not affected by weight. (Defendants' exhibit 7; R. 307; offered at R. 195). Mr. Barker did not deny this. Professor Worley testified that certain highway costs have nothing to do with the weight of the vehicles that pass over the highway (R. 127).

An example of this is the cost of installing and maintaining a traffic control signal. Let us assume that there is a stop and go light installed at an intersection and that a truck weighing 59,000 pounds, a passenger car weighing 2,000 pounds, and a motorcycle weighing 200 pounds approach the light and stop. The light changes from red to green, and the traffic goes on. It is apparent that the cost of installing and maintaining this traffic light is not connected in any way with the weight of the vehicles passing by it. It costs just as much to install and maintain this light for traffic consisting solely of light weight vehicles such as motorcycles and passenger cars as for heavy trucks. Other examples of highway costs which are similarly not related to weight are:

Grading
Fencing
Signs and signals
Culverts
Landscaping
Roadside parks
Excavation and abutments
Piers
Right-of-way
Diversion of funds

Professor Worley further stated that certain other items of highway cost are only partially affected by the weight of vehicles: administration expenses, construction, maintenance, interest (R. 128). Plaintiffs' exhibit 14 (R. 271; offered at R. 133) sets forth an allocation of highway costs

between those affected by vehicular weight and those not affected by weight. That exhibit represents the considered judgment of the witness and of other recognized authorities in the field of highway engineering (R. 141). Following is a summary of plaintiffs' exhibit 14 and Professor Worley's testimony concerning the proper distribution of highway costs as between those affected by weight and those not affected by weight:

Item of Highway Cost	Percent of Total Highway Cost	Percent Due to Weight	Percent Not Due to Weight
Construction	36.3	60.0	40.0
Right-of way	1.7	0.0	100.0
Equipment, etc.	4.1	0.0	100.0
Administration	10.3	33.3	66.7
Diversion	5.5	0.0	100.0
Interest	7.8	60.0	40.0
Other	7.2	0.0	100.0
Maintenance	27.1	33.3	66.7
	100.0		

By dividing the actual costs into the above percentages, Professor Worley concluded that approximately 40% of all highway costs are due to weight and 60% are not due to weight.

Mr. Barker, Chief Highway Engineer for the State of Illinois, testified that he considered this allocation theory sound (R. 193), but stated that in his opinion it was not possible to make an allocation between costs due to weight and costs not due to weight (R. 193).

Mr. Barker admitted that certain items of cost are not affected by weight; amongst others he noted cutting and clearing vegetation, removing dirt and debris, roadside planting, traffic signs, electric lighting, center line painting (R. 203, 204). Thus, even Mr. Barker, Chief Highway Engineer and principal witness for the State, concedes that the theory advanced by the plaintiffs in this case is sound (R. 193).

Plaintiff's exhibit 21a (R. 285; offered at R. 205) is a page taken from the 32nd Annual Report of the Division of Highways of the State of Illinois for 1949. The exhibit is not reproduced below in full but the part that is shows the cost of maintaining and operating the highways in the State of Illinois in 1949, and is as follows:

Class of Work	Total	1949 Costs Percentage of Total
Maintenance:		
Wearing surface	$ 4,232,943.02	31.52
Shoulders, ditches, cuts, and fills	2,430,157.14	18.10
Fixed large bridges (100-ft. length and over)	110,616.11	.82
Culverts and other drainage facilities	145,503.80	1.08
Small bridges (less than 100 ft. length)	27,675.66	.21
Movable span bridges	1,524.73	.01
Miscellaneous structures and facilities	25,151.93	.19
Total maintenance	$ 6,973,572.39	51.93
Operation:		
Cutting and clearing vegetation	$ 1,881,092.93	14.01
Snow removal and ice control	2,080,265.35	15.49
Clearing dirt and debris	1,100,773.62	8.20
Upkeep of markers and safety signs	656,151.35	4.89
Roadside planting maintenance	187,901.18	1.40
Upkeep of guardfence	171,648.41	1.28
Centerline marking	202,752.72	1.51
Upkeep and operation of traffic signals	102,398.65	.76
Traffic survey	166.04	.00
Subway and drainage pumping	37,905.35	.28
Electric lighting	27,072.53	.20
No-passing zone marking	7,103.05	.05
Total operation	$ 6,455,231.18	48.07
Total highway maintenance and operations	$ 13,428,903.57	100.00

We submit that the following argument shows that the state's own figures support Professor Worley's allocation of costs between factors due to weight, and those not due to weight.

Professor Worley set forth in his Table IV, (Plaintiffs Ex. 14 R. 271; offered at R. 133) that 66.7% of costs of maintenance were not due to weight. This "maintenance" figure covers the items shown above as maintenance and operation. Let us look at the items shown in the Report of the Division of Highways (plaintiffs' exhibit 21a). The first item that appears is "wearing surface". Although we do not believe it is strictly accurate, we will assume for the purposes of this argument that the maintenance of the wearing surface is due entirely to weight, but we submit that the following classes of work have no relationship whatsoever to the weight of the vehicle passing over the highway, and the following table shows the per cent those items comprise of total highway costs in 1949 as shown in the Annual Report of the Division of Highways referred to above.

Class of Work	Per Cent of Total Costs
Shoulders, ditches, cuts and fills	18.10
Culverts and other drainage facilities	1.08
Cutting and clearing vegetation	14.01
Snow removal and ice control	15.49
Clearing dirt and debris	8.20
Upkeep of markers and safety signs	4.89
Roadside planting maintenance	1.40
Upkeep of guardfence	1.28
Center line markings	1.51
Upkeep and operation of traffic signals	.76
Electric lighting	.20
No-passing zone markings	.05
	66.97

The court will observe that these items not due to weight total 66.97% of the total amount spent by the state in 1949 for maintenance and operating costs. Note how similar this is to Professor Worley's Table IV (Plaintiffs' exhibit 14 R. 271; offered at R. 133) in which he states these costs to be 66.7%.

Professor Worley divides the administration cost on the same basis as these maintenance costs above, because he stated that administration is concerned largely with maintenance although he stated many people believe that no effect should be given to weight in the allocation of administration costs, and it should be charged 100% to "not due to weight" (R. 130).

He states that no part of the right-of-way and equipment costs should be charged to weight (R. 130). We submit that the cost of acquiring the land for the right of way and the equipment used in the maintenance of the highway do not depend on the weight of the vehicles passing over the highway.

The other major item in the schedule is that of construction. Professor Worley divided this 60% due to weight and 40% not due to weight (R. 128). In setting this ratio, he took into account the fact that included in construction cost are costs for constructing signs and signals, culverts, landscaping, roadside parks, excavations, abutments and piers, as set forth above. Many of these same items are not properly allocable to weight for the purpose of maintenance and so should not be for the purpose of construction (R. 129).

Explaining application of the allocation principle outlined hereinabove, Professor Worley referred his testimony directly to plaintiffs' exhibits 11-16 (R. 265-275 incl.; offered at R. 133) which he prepared. After making a conservative allocation of highway costs between that percentage affected by weight and that percentage not so affected (plaintiffs' exhibit 14, R. 271), the portion of total highway costs attributable to weight was distributed back among the various vehicle classifications on the ton-mile basis, and that portion of highways costs not attributable to weight was distributed back among the vehicle classifica-

tions on a vehicle-mile basis (plaintiffs' exhibit 15, R. 273; offered at R. 133). These were added together revealing the total contribution each vehicle should make to the total highway costs. As explained above, since each vehicle pays part of the costs in the payment of the gas tax, the gas tax per vehicle was subtracted therefrom, and the difference was determined to be the proper registration fee for each class of vehicle.

The ton-mile rate used in so doing was not the ton-mile rate of the passenger car, or any favored class of vehicles, but an average ton-mile rate for all vehicles. Under the resulting tax schedule (plaintiffs' exhibit 15; R. 273) each vehicle bears its proportionate share of highway costs; each vehicle paying for that portion of highway cost unrelated to weight according to the mileage traveled by that class of vehicle, and each vehicle paying for the portion of highway cost related to weight according to its weight and the mileage traveled by that class of vehicle.

Mr. Barker, testifying on behalf of the defendants, agreed that there were certain items of highway cost unrelated to weight, but stated that in his opinion an allocation could not be made without making "innumerable assumptions" (R. 202). As has already been pointed out, the authors of the 1951 Amendment made such assumptions. They assumed as one of the basic premises of their registration fee schedule that the license fee now paid by passenger cars was proper, and that all trucks should be made to pay licenses on the same basis as the least efficient vehicle operating on state roads i.e. the passenger car. They ignored the obvious fact that a substantial portion of highway cost has nothing to do with weight. The motorcycle, the automobile, and the 59,000 pound truck derive equal benefit from a stop and go light, assuming that their mileage is the same. This example can be multiplied a hundred

times. It was the considered judgment of Professor Worley that 60% of highway costs have nothing to do with weight (R. 128). In support thereof he cited several recognized authorities: *Bader and Downs* (R. 129), a study by the Illinois State Highway Department made in 1938 (R. 129), Mr. Joseph Eastman of the Interstate Commerce Commission (R. 131), the Griffenhagen report on Illinois (R. 131), and the United States Board of Investigation and Research (R. 131). The Chief Highway Engineer for the State of Illinois, conceded that many highway costs are unrelated to weight (R. 203).

When the considered judgment of leading highway engineers is that a substantial percentage of highway costs had nothing to do with weight, a taxing theory which fails to take that fact into account cannot be said to produce a tax schedule which bears any relation to the value of the use of the highways to the various classifications of vehicles. The tax schedule contained in the 1951 Amendment was based, according to the testimony of the Chief Highway Engineer of the State, on the ton-mile theory, and as such failed to recognize that any highway costs are unrelated to weight (R. 201). Such a schedule necessarily must discriminate against the heavier and more efficient vehicles in favor of passenger cars and lighter vehicles, and a reference to plaintiffs' exhibit 16 (R. 275) will bear out this fact.

We are aware that scientific accuracy is not essential in preparing a tax schedule such as this, and we do not contend that Professor Worley's is the only schedule that should be adopted, but when the tax schedule is founded upon weight and when the undisputed evidence reveals that certain costs are not related to weight, the tax bears no reasonable relation to the privilege of using the highway and it should be declared unconstitutional.

In this case we are not concerned with the ton-mile theory generally but the application of the ton-mile theory as it was applied here. Professor Worley and Mr. Barker both testified that the use of the ton-mile theory was controversial and it may be claimed that since the basis of the tax schedule is controversial this court will not say that it is unconstitutional when there are arguments to be made on both sides of the question. However, the court should keep in mind that we are concerned with the formulation of a tax scheme which was based upon the ton-mile theory but which theory has been misapplied because, as pointed out heretofore, the formulation includes many items not due to weight. Professor Worley testified that he had never known in all the years of his experience the ton-mile theory to be so applied before.

The court should also keep in mind that the theory of the ton-mile tax is that it is based on the cost to transport one ton of cargo for one mile, but under this act the tax is actually assessed without reference to whether the vehicle travels one mile or one million miles. It may be well enough to talk about the unlimited privilege but where certain of these carriers are limited by law to operate over fixed routes they are not able to make use of the unlimited privilege.

A tax based on seating capacity, *Sprout* v. *South Bend*, (*supra*) a tax based on earning capacity, *Interstate Transit Inc.* v. *Lindsey*, (*supra*) a tax based on chassis weight not related to mileage traveled or tonnage carried, *Prouty* v. *Coyne*, (*supra*), and a tax levied on gasoline carried in the tank *McCarroll* v. *Dixie Greyhound Lines, Inc.*, (*supra*), were all declared unconstitutional by this court because the formula used produced a tax that was not an accurate measure of the benefit received from the use of the state's highways.

It is interesting to observe that this court declared invalid a California caravan tax of $15.00 where the evidence showed that the attendant cost to the state was only $5.00. In other words the tax was 300% of the cost to the state, for the benefit received by the motorist. Here Professor Worley's testimony showed that this tax in some classification was 300% more than it should have been, because of the inclusion of all the costs "not due to weight" (Plaintiff's exhibit 16, R. 275; offered at R. 133). The line must be drawn somewhere. While we recognize that scientific accuracy is not required, yet we contend that a tax schedule which is 300% more than it should be, is unconstitutional. If the tax were only slightly excessive it might not be unconstitutional, but this 300% discrepancy is so great and the dollar value of the tax is so high, as pointed out hereafter in Point IB, that this tax must fall.

The term "fair and reasonable compensation" for the privilege of road use is not self-defining. Courts must look to some rational basis which relates the tax to the privilege, and ultimately courts must be guided by the cost of constructing and maintaining highways and regulating traffic thereon. Unless both the amount of the tax and the basis for the tax are taken into consideration in determining the constitutionality of a taxing statute, constitutional safeguards mean nothing in the face of "legislative discretion." In determining the constitutionality of vehicle taxes, courts inevitably encounter the problem of determining, as Mr. Justice Frankfurter said in the *Brice* case, "how much is too much;" they may resort to examination of the tax formula to see if it reasonably relates the tax to the value of the privilege granted, or they may judge excessiveness in terms of economic strain on the carrier. We submit that by the long-established weight of authority courts have required that a tax formula bear a reason-

able relationship to the privilege of road use, and that it be nondiscriminatory in its operation.

Therefore, in judging the constitutionality of the 1951 Amendment the basis of the tax must be considered, and if it results in an arbitrary, discriminatory tax or a tax which is in excess of fair or reasonable compensation for road use as applied to the heavier vehicles or a tax which is unrelated to the value of the privilege, it cannot be upheld, for it then imposes an undue burden on the heavier and more efficient vehicles engaged in interstate commerce.

We submit that the evidence adduced by the plaintiffs in the case at bar conclusively demonstrates that because of the formula used, the tax schedule in the 1951 Act unreasonably discriminates against the heavier and more efficient trucks in favor of passenger cars and lighter vehicles, and that the tax basis and the resultant schedule of fees utterly fails to bear any reasonable relation to the privilege of road use. Accordingly, we submit that the Supreme Court of Illinois erred in failing to hold that the 1951 Amendment constituted a direct and unconstitutional burden on interstate commerce.

B.

The tax is excessive in amount.

In considering the effect of the 1951 Amendment on interstate commerce, we call the Court's attention to the very important fact that *there is no known tax relating to motor vehicles that approaches in amount the tax involved in this litigation.* Defendants can cite no case where the United States Supreme Court or any State appellate court has ever sustained any similar tax which is as high as the tax embodied in the 1951 Illinois Amendment. Mr. Justice Frankfurter, in his dissenting opinion in *Capital Greyhound Lines* v. *Brice*, 339 U.S. 542, 94 L. ed. 1053, states that the largest annual tax based upon size

or weight which has been sustained is $75, and the largest tax on any basis which has been sustained is $400.00 annually. He lists the following cases among others.

Name of Case	Range of tax amounts for the entire class
1. *Hendrick* v. *Maryland*, 235 US 610, 59 L ed 385, 35 S Ct 140 (1915)	$ 6 — $ 18
2. *Kane* v. *New Jersey*, 242 US 160, 61 L ed 222, 37 S Ct 30 (1916)	$ 3 — $ 10
3. *Clark* v. *Poor*, 274 US 554, 71 L ed 1199, 47 S Ct 702 (1927)	$20 — $200
4. *Sprout* v. *South Bend*, 277 US 163, 72 L ed 833, 48 S Ct 502, 62 ALR 45 (1928)	$25 — $ 75
5. *Interstate Transit, Inc.* v. *Lindsey*, 283 US 183, 75 L ed 953, 51 S Ct 380 (1931)	$50 — $750
6. *Hicklin* v. *Coney*, 290 US 169, 78 L ed 247, 54 S Ct 142 (1933)	$30 — $400

Compare these taxes listed above with the taxes under this 1951 Act which can amount to $1588.00 per truck annually.

Since this 1951 Illinois Act represents a new and unprecedented tax imposition, reference to the leading cases on the subject of motor vehicle taxes can only be of limited assistance in determining the validity of this latest Illinois enactment. The Court should not lose sight of the wide gulf which separates this 1951 Act from the taxing statutes involved in any of the decided cases.

It is our position that this terrific difference in the amount of the tax makes it actually amount to a difference in kind rather than a difference in degree.

In each and every case that has come before this court from *Hendrick* v. *Maryland*, (*supra*), decided in 1915, until *Capital Greyhound Lines* v. *Brice*, (*supra*), decided in 1950, the court has stated that the tax must be reasonable in amount.

This tax is not reasonable in amount. It is excessive.

In *Hendrick* v. *Maryland*, 235 U.S. 610, 59 L. ed. 385, the court, in upholding a tax ranging from $6.00 to $18.00 stated (p. 624): ". . . *so long as they are reasonable* and are fixed according to some uniform, fair, and practical standard, they constitute no burden on interstate commerce."

Can the court look at an $18.00 fee in the same way it looks at a $1588.00 fee?

In *Kane* v. *New Jersey*, 242 U.S. 160, 61 L. ed. 222, at page 166, the court spoke of the power of the state to

". . . exact reasonable compensation."

In *Interstate Busses Corp.* v. *Blodgett*, 276 U.S. 245, 72 L. ed. 551, the court stated at page 249:

". . . the state may impose a reasonable charge."

In *Clark* v. *Poor*, 274 U.S. 554, 71 L. ed. 1199, the court said at page 557:

"Nor is it suggested that the tax is so large as to obstruct interstate commerce."

In *Aero Mayflower Transit Co.* v. *Georgia Public Service Comm.*, 295 U.S. 285, 79 L. ed. 1949, the court in upholding an annual fee of $25.00 stated that the fee was moderate in amount.

In *Aero Mayflower Transit Co.* v. *Board of Railroad Commrs.*, 332 U.S. 495, 92 L. ed. 99, the court commented that annual taxes of $10.00 and $15.00 were fair and reasonable.

In upholding the constitutionality of a Georgia statute imposing a maintenance tax upon motor carriers measured by rate of capacity and factory weight of trucks and trailers, the court stated in *Dixie Ohio Express Co.* v. *State Rev. Comm.*, 306 U.S. 72, at 76:

"It is elementary that a State may not impose a tax on the privilege of engaging in interstate com-

merce. (Citations). But, consistently with the commerce clause, a State may impose upon vehicles used exclusively for interstate transportation a *fair and reasonable tax as compensation* for the privilege of using its highways for that purpose."

Referring again to *Capital Greyhound Lines* v. *Brice, supra,* the court stated at page 547:

"... taxes like that of Maryland here are valid *unless the amount is shown to be in excess of fair compensation* for the privilege of using state roads.

"*Our adherence to existing rules does not mean that any group of carriers is remediless if the total Maryland taxes are out of line with fair compensation due to Maryland.* Under the rules we have previously prescribed, such carriers may challenge the taxes as applied, and upon proper proof obtain a judicial declaration of their invalidity as applied."

And in *Prouty* v. *Coyne,* 55 F. 2d 289 (D.C., S. Dak.), the opinion by the three-judge Federal court declared (p. 292):

"The state may constitutionally impose a tax burden on interstate commerce as compensation for the use of the public highways, *provided the charge is only a reasonable and fair contribution* to the expense of construction and maintenance of such highways and of regulating the traffic thereon."

In this case the court held the South Dakota graduated license fee statute invalid as to interstate carriers. The challenged statute contained fees based on the greater of manufacturer's weight of *chassis* or actual *chassis* weight, with fees ranging from $15.00 to $400.00.

Compare these taxes with the tax in the case at bar. A holding that an annual tax of $18.00, or $10.00, or $75.00, or $200.00, or $400.00 constitutes no undue burden on interstate commerce is no precedent for holding that an annual tax of $1588.00 is not a burden on interstate commerce.

This particular tax has never been considered by this court before and this court is free to hold this tax unconstitutional, because this court has never before decided a case that compared with it.

It can't be denied that this tax is a burden. The following are typical examples of the effect of this act to increase license fees on some of the plaintiffs in this case and show the fees that were due in 1951 under the old act and the new fees that are due in 1952 and 1954 under the new act (R. 38-97):

License Fees.

Party	1951 fees	1952 fees	1954 fees
Co-Ordinated Transport (R. 38)	$ 4,000.	$35,000.	$45,000.
Wagner Transfer (R. 54)	541.	8,000.	11,299.
Alton Box Board Co. (R. 61)	11,133.	29,509.	41,050.
Russell Young (R. 65)	11,986.	26,049.	36,414.
Cecil Kain (R. 69)	350.	894.	1,250.
Rockford Motor Service (R. 71)	4,640.	11,695.	16,432.
Ryan Ft. Lines (R. 75-76)	2,970.	9,422.	12,520.
Elgin Storage & Transfer Co. (R. 83)	9,712.	22,209.	31,121.
Gold Star Motor Service (R. 87)	3,839.	8,793.	12,226.
Dumont Cartage (R. 89)	5,882.	14,916.	20,899.
Valentine Transfer & Storage Co. (R. 94)	1,251.50	3,740.	4,934.
Granite City Steel Co. (R. 97)	4,224.	7,422.	10,348.

Many of the plaintiffs testified that the new annual taxes or *fees to be charged under this act were in excess of the net income they realized in* 1951 (R. 41, 54, 65, 69, 71, 75-76, 83, 87, 89). Many of them testified they would be forced out of business because of the excessive amount of this tax. The confiscation point is covered later in our brief but in determining how much is too much the court should have these facts in mind.

Look at the effect that this Act will have on the business of Co-Ordinated Transport with an increase in fees from

$4,000.00 in 1951 to $45,000. in 1954. This is *an increase of over* 1000%. And Wagner Transfer Co. with an increase of from $541.00 to $11,299.00, *an increase of over* 2000%.

Is this a "fair" or "reasonable" tax "moderate in amount"?

In determining the validity of this tax it should also be noted that the plaintiff, Alton Box Board Co., operates its trucks from Alton to St. Louis and return, and on this entire round trip it travels only three miles on the Illinois highways (R. 61) and for this it is going to have to pay to the State of Illinois in 1952 fees totalling $29,509.00 and in 1954 fees totalling $41,050.00.

Is this reasonable?

It should be kept in mind that this court stated in *Hendrick* v. *Maryland*, (*supra*) and has never departed therefrom, that (p. 622):

> "The reasonableness of the state's action is always subject to inquiry in so far as it affects interstate commerce. . . ."

It should also be kept in mind that under the 1951 Amendment the taxpayer's optional provision for basing the tax on the actual miles travelled has been eliminated, so that the Alton Box Board Co. must pay taxes aggregating $41,000. for travelling three miles on the Illinois highways. We are aware of the cases which comment that the taxpayer has the privilege of travelling as many miles as he wishes, but those statements have never been made in any case that had a tax as huge as this.

It may be fitting to speak of a tax as a payment for a privilege when the amount exacted is small. The small tax cannot burden interstate commerce even if the taxpayer fails to exercise the privilege. But with a huge tax such as levied by the 1951 Amendment the very size of the taxes

makes it apparent that the commerce is burdened even if the privilege is exercised to the fullest extent. As Justices Frankfurter and Jackson stated in the *Capital Greyhound* case, *supra* at p. 558:

> "When a privilege tax is relatively small in amount, and therefore to be treated as a rough equivalent for what the State may exact with due regard to administrative practicalities, the danger of an unfair burden falling upon interstate commerce remains correspondingly small. Cf. *Union Brokerage Co.* v. *Jensen,* 322 U.S. 202, 210, 211, 88 L. ed. 1227, 1232, 1233, 64 S. Ct. 967, 152 ALR 1072. But a large privilege tax presents dangers not unlike those arising from unapportioned gross receipts taxes on interstate transportation beyond a State's power to impose. (citation) . . ."

The 1951 Act was based in large part on data contained in the Griffenhagen report (R. 183, 184, 201). Griffenhagen and Associates is an engineering firm that was employed under an agreement with the Highway Department at the direction of the Highway and Traffic Problems Commission which was established by the legislature. They conducted a very extensive survey, extending over a period of two years, of the conditions of the Illinois highways and recommended a schedule of taxes to be adopted by the legislature of the State of Illinois to increase fees to be paid by trucks to help defray the expense of the maintenance and care of the highways. Mr. Frank N. Barker, Chief Highway Engineer of the State of Illinois, and the main witness for the State, testified that he considered the conclusions and recommendations contained in the report to be sound (R. 201). He assisted in the preparation of the report. He reviewed the report. Yet, notwithstanding that these experts recommended a schedule of fees to the legislature, the legislature completely disregarded their recommendations and enacted a bill which greatly increased the fees that had been recommended by Griffenhagen. For

example, a 10-wheeled 55,000 pound truck paid a fee of $420.00 in 1950; the Griffenhagen report recommended a fee of $765.00 (R. 281), and the same truck would be required under the 1951 Act to pay in 1954 a fee of $1588.00.

Mr. Justice Frankfurter, at page 559 of his opinion in *Capital Greyhound Lines* v. *Brice*, (*supra*) posed the question:

"How much is too much?"

Our answer is $1588.00 per year is too much.

As heretofore set forth, Professor Worley testified that he had made an analysis of the Act in question. He concluded that the taxes charged by this act *were excessive in some classifications by as much as* 300%.

We are thoroughly aware of the cases that state that no schedule of taxes needs to fit with a mathematical accuracy, but when the taxes are so high, so huge, of such considerable magnitude, so exorbitant and so excessive as the taxes charged by this Act, they must be stricken down as being an unconstitutional burden on interstate commerce.

It is interesting to observe that while the tax on trucks has been increased in some instances more than 300%, the tax on passenger vehicles has not been increased at all (R. 307). Defendants' exhibit 7 (R. 307; offered at R. 195) shows there were a total of 336,044 trucks registered in Illinois in 1949 and a total of 2,078,704 passenger cars. Could it be that the legislature was more concerned with the political effect of raising the taxes on 2,078,704 passenger cars than of making certain that the passenger car bore its fair share of the highway costs?

When the uncontradicted testimony in the case shows that the fees are twice as large as those recommended by the very experts appointed by the Legislature to study the problem, 300% excessive in some categories according to the testimony of Professor Worley, and more than *twenty*

times the size of any tax based on weight that has heretofore been sustained by this court, the tax is too high. Such a tax is far in excess of "fair" or "reasonable" compensation for the privilege of using state roads and imposes an undue burden on interstate commerce in violation of Sec. 8, Article I and Sec. 1, Amendment XIV of the Constitution of the United States.

II.

The taxes imposed by the 1951 Amendment are confiscatory and violate Section 1 of the 14th Amendment to the Constitution of the United States of America.

We have earlier considered, in connection with the 1951 Amendment to the Motor Vehicle Law of Illinois being a burden on interstate commerce, that the tax is too high. So, too, in considering whether or not the law imposes a confiscatory tax the question becomes "how much is too much?"

Admittedly, there are relatively few cases where Courts have been obliged to determine that taxes levied by state legislatures have been so excessive as to constitute a violation of the due process clause of the 14th Amendment. This fact is true because legislatures have generally considered the interests of their constituents and the right of the people to carry on legitimate businesses and have realized that forcing such businesses to discontinue would necessarily in the long run result in a decrease rather than an increase in the state's revenue.

Despite the relatively few holdings that taxes have been confiscatory, the Courts have always recognized that if a tax were confiscatory it would violate the 14th Amendment. For example, in *Dane* v. *Jackson*, 256 U.S. 589, at page 599, this Court said:

> ". . . where, as here, conflict with Federal power is not involved, a state tax law will be held to conflict

with the 14th Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—'to spoliation under the guise of exerting the power of taxing.'"

Again, in the *Ohio tax cases*, 232 U.S. 576, this Court, citing with approval an Ohio case, quoted therefrom at page 589:

> "These limitations (the guarantees contained in the Bill of Rights) prevent confiscation and oppression under the guise of taxation, and the power of such taxation cannot extend beyond what is for the common or public welfare, and the equal protection and benefit of the people; but the ascertaining and fixing of such values rests largely in the general assembly, *but finally in the Courts.*"

And the Court further points out that:

> "... it was not intended to hold that the Courts as final arbiters might overthrow a law imposing a tax on privileges and franchises merely because in isolated cases such law might impose a hardship, but only that those excise laws whose general operation is confiscatory and oppressive are unconstitutional."

So, too, have the Courts of almost every state recognized the basic principle that the legislature may not prohibit useful enterprise by excessive taxation.

The Supreme Court of Alabama in *State* v. *Kartus*, 230 Ala. 352, 162 So. 533, at 537, quoting from an earlier case, said:

> "In the levy of a privilege or license tax the Legislature is not restricted as to the trades, businesses, or occupations which it may select, or the amount levied, so long as it does not discriminate between members of the same class, that is, those similarly situated, and the tax must not be so exorbitant as to prohibit or oppress or restrain a legitimate and useful trade, business, or occupation, as distinguished from a certain

class which, while tolerated is recognized as being hurtful to public morals, productive of disorder or injurious to the public."

And the Supreme Court of Florida, in *Jerome H. Sheip Company, et al* v. *Amos,* 100 Fla. 863, 130 So. 699, at 707, said:

"Where the public health and safety are not involved, the ultimate test is whether or not the tax so imposed upon the privilege is so arbitrary or oppressive as to prohibit a great number, if not all persons, from pursuing occupations otherwise lawful."

See also *State ex rel Bonsteel* v. *Allen,* 83 Fla. 214, 91 So. 104.

The Circuit Court of Appeals for the Tenth Circuit in the *Morton Salt Company* v. *City of South Hutchinson* case, 159 F. 2d 897 at 901 has summed up the basic law in these words:

"But, however great the legislative power of taxation, it is not wholly without constitutional limitations. The due process and equal protection clauses of the Constitution do provide some measure of protection against the abusive exaction of a tax. The test of due process, say the courts, is whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. In other words the query is, what has the state given for which it may ask return. . . . If the tax imposed clearly results in such a flagrant and palpable inequality between the burden imposed and the benefit received that it amounts to an arbitarary taking of property without compensation, it is said to violate the due process guarantee under the 14th Amendment. All of the cases which have affirmed the broad powers of taxation have recognized these limitations."

Obviously, it becomes necessary to study the tax imposed by the 1951 amendment to the Illinois Motor Vehicle Law to determine whether it does in fact confiscate the trucking

industry in Illinois. As we have heretofore demonstrated, the tax imposed is based on the weight of the vehicle with its maximum load and the maximum tax is $1588.00 a year, while the largest annual tax based upon size or weight heretofore sustained by the Supreme Court of the United States has been $75.00 and the largest tax on any basis sustained by this Court has been $400.00 annually. Obviously, at some point a state legislature imposes a tax which is prohibitory, and we submit that the Illinois legislature has done so in this case, where the amount involved is more than treble the highest tax of any nature heretofore sustained by this Court against the owner of a truck.

Let us examine the evidence in this case to determine how the tax affects truckers. Each of the 54 plaintiffs in this suit owns one or more vehicles subject to the taxes imposed, and each is engaged in hauling personal property within or partly within and partly without the State of Illinois. Most of the plaintiffs transport personal property belonging to others either for hire or under contract, and the rest of the plaintiffs own trucks for the transportation of their own property. They constitute, we submit, a complete cross-section of the trucking industry. Among those who testified in the trial of this case were line haul carriers (R. 37-82-94), short haul carriers (R. 71-75-82-86-88), local carriers (R. 46-53-71-75-77-80-82-86-88-94), contract carriers (R. 53), truck brokers (R. 65-69) and private carriers (R. 61-69). They are engaged in both intrastate and interstate commerce; some of them own trucks which never leave the confines of a particular municipality (R. 71-76-83-89); many of them carry all types of merchandise as common carriers, while others specialize in various types of merchandise ranging from agricultural products (R. 77-80) to steel and machine hauling (R. 53); they range from the owner of one tractor, which constitutes only a portion of a licenseable unit (R. 69) to businesses which own as

many as 59 power units (R. 83) and they constitute a complete cross-section of the trucking industry within the State of Illinois, with the possible exception of a certain few very large cross country haulers who own hundreds of units, at least one of which is a party to this case but did not testify. Actually, more truck operators were available to testify in this case as to their operations and the effect of the amendment to the Motor Vehicle Act on their operations, but were not called since both opposing counsel and the trial court indicated that they had heard enough of this type of testimony (R. 91). Admittedly, all affected truck operators in Illinois did not and could not testify, but since the record contains the testimony of all types of truckers who are representative of the industry, we submit that the uncontradicted evidence in this record is demonstrative of the effect of the licenses imposed on the entire trucking industry.

Let us, therefore, examine in detail a few examples of the testimony presented:

Milton Gerwin, President of Co-ordinated Transport, Inc. of Illinois, and of Motor Equipment Company, testified (R. 37 *et seq.*) that in 1951 under the old law his license fees were approximately $4000.00, they would become approximately $35,000.00 in 1952 and approximately $45,000.00 in 1954 under the new law, that the capital invested in his companies is about $500,000.00, and that in 1950 the companies' net income before taxes was approximately $11,000.00.

Marvin Wagner, a partner in Wagner Transfer Company, testified (R. 53 *et seq.*) that in 1951 their license fees were about $541.00; that in 1952 they would become, under the new Act, a little over $8000.00, and in 1954 $11,299.00, and that the net income for 1950 was $7356.00.

Russell M. Young testified (R. 65 *et seq.*) that he is a

truck broker furnishing trucks and drivers to common carriers; that he paid $11,986.00 in license fees in 1951 on 50 trucks; that he had disposed of 12 trucks, but on the 38 remaining trucks he would have to pay $26,049.00 in 1952, and $36,414.00 in 1954; that his net income in 1950 was $17,236.35, and that he had drawn no salary or compensation from his business before figuring the net income.

Cecil Kain testified (R. 69 *et seq.*) that he had been a truck driver since 1935, and had gone into business himself April 2, 1951, when he bought a tractor which he leases with himself as driver to pull trailers belonging to a truck company; that his license fee in 1951 was $350.00, in 1952, under the new Act it would be $894.00, and in 1954 $1250.00; that his gross income from April, when he commenced business, until the time he testified late in 1951, was $5354.96, but that since his truck is not yet paid for he could figure that he had no net income.

Ralph Haen, vice-president and general manager of Rockford Motor Service, who has been in the trucking business since 1926, testified (R. 71 *et seq.*) that his 1951 license fees were $4640.00; that in 1952, under the new Act, he will have to pay $11,695.00, and in 1954 $16,432.00; that the capital invested in his company is $106,000.00; that his net income in 1952 was $3147.00.

Stephen F. Ryan testified (R. 75 *et seq.*) that he has been in the trucking business since 1935; that his 1951 license cost was $2970.00; that in 1952, under the new Act, the fees would be $9422.00, and in 1954 $12,520.00; that the capital investment in his company was about $60,000.00, and his net income in 1950 was $2542.00.

W. J. Edmonds, General Manager of Granite City Steel Company, testified (R. 96 *et seq.*) that his concern's 30 trucks carried a license fee in 1951 of $4224.00; that in

1952 the fees would be $7422.00 and in 1954 $10,348.00; that they hauled no property belonging to others, but were used primarily in inter-plant operations between two plants a block apart, and that in this operation the trucks crossed one state highway.

Other truckers testified in the record similarly. In almost every case the increase in truck license fees equalled or exceeded the net income of the truck concern.

In addition, two Chicago bankers testified (R. 100 *et seq.*) that their institutions had in the past made substantial loans to truckers for the purchase of equipment, and they were curtailing these loans because of the effect of the 1951 amendment to the Illinois Motor Vehicle Act.

The obvious purpose of the testimony of the truck operators was to demonstrate that in many cases the increase in truck license fees under the new Act would exceed the net income of the trucking concerns, and that in every case the additional license fees would at the very least reduce the net income to a point where the owner of a truck could not make a fair return on his capital investment. So, too, the curtailment of loans by banking institutions for the purchase of equipment by truckers because of the effect of the Act and the opinion of the bankers that truckers would be unable to make enough to repay such loans, is an irrefutable demonstration of the confiscatory effect of the excessive tax.

The appellees have argued throughout this case that the mere fact that a tax as applied to an individual may put such individual out of business is not considered a valid argument against the tax, and the Supreme Court of Illinois, in the case of *Bode, et al* v. *Barrett,* 412 Ill. 204, 106 NE 2d 521 so held. We cannot quarrel with this principle of law, but, we submit, as more and more individuals who constitute the class cumulate their testimony it becomes

more and more reasonable to assume that the effect of the tax on the industry as a whole will be prohibitory. Obviously, it would be impossible to place every trucker within the State of Illinois on the witness stand, and equally obviously it becomes necessary for the Court to take cognizance of the fact that the cumulative testimony of a substantial number of witnesses representative of the whole industry in fact indicates the effect and confiscatory nature of the tax on the entire industry. The trial court who heard the testimony of the affected truckers held that the tax in fact confiscated the trucking industry within Illinois. The rule is clear that an entire legitimate industry or a substantial segment of such industry cannot be prohibited by excessive taxation. The general rule is found in the decisions of every court in the country and is stated, for example, in 33 Am. Jur. at page 366, where it is said:

> "License for revenue—Ordinarily, the reasonableness of a license fee imposed as a tax is a question for the taxing power, and, in the absence of an abuse of such discretion, the Courts will not interfere. The tax imposed may not, however, amount to a prohibition or restraint of trade upon any legitimate and useful or harmless business or occupation, nor may it be oppressive upon a particular class."

So, too, in 37 C.J. at page 194 it is said:

> "If the fee or tax is imposed for revenue purposes, the amount thereof is particularly within the discretion and judgment of the legislative authority, state or municipal, and ordinarily will not be interfered with by the courts, unless the tax imposed amounts to a prohibition of a useful or legitimate occupation . . ."

One of the numerous cases following this rule which explains it in detail is *Fiscal Court of Owen County, et al* v. *F. & A. Cox Co.*, 132 Ky. 738, 117 S.W. 296, involving a graduated license tax on horsedrawn vehicles, which was held invalid. The Kentucky court said at page 298:

> "It may be conceded that ordinarily the reasonable-

ness of a license fee imposed as a tax is a question for the taxing power, and the courts will not interfere with its discretion. (Citing cases). This rule we think, however, is subject to the limitation that the tax imposed shall not amount to a prohibition of any useful or legitimate occupation. (Citing cases). While there are numerous authorities to the contrary, it will be found that the license fee involved in those cases was not prohibitive, and the courts simply declared the general rule that the reasonableness of the tax was a matter within the discretion of the taxing power. We can hardly believe that the same courts that announced that doctrine would hold to be valid an ordinance or statute imposing upon every physician and attorney at law an annual license tax of $10,000, or imposing upon every merchant a license of $5,000, or upon every washerwoman a tax of $1,000 per year. If a prohibitive license tax could be imposed upon the professions and occupations mentioned above, the same character of tax could be imposed upon every profession and occupation. It may be answered that no legislative or municipal body would ever do this. The question, however, is not what it would do, but what it might do. The question is one of power. A powerful organization of men engaged in different pursuits might prevent the imposition of a prohibitive license tax upon their respective callings or occupations, but what is to become of the man without political power, whose means of livelihood are taken away by the imposition of a prohibitive tax? Shall we still say that the amount of the tax is within the discretion of the taxing power, or shall we say that among the inalienable and inherent rights guaranteed by our Constitution to every law-abiding citizen is the right to live and enjoy life and the right to acquire property, and that these rights necessarily carry with them the right to gain a livelihood and acquire property by following any useful or legitimate occupation, the pursuit of which is not injurious to the public weal? In our opinion there is but one answer to this question: If you deprive a man

of the means of livelihood, you necessarily deprive him of the right to live and enjoy his life. Great as is the taxing power, it can never rise superior to the inalienable rights guaranteed by our Constitution. As the evidence in this case shows that the license tax in question is prohibitive, we have no hesitancy in declaring it invalid. (Citing cases.)"

Similarly, in the case of *State* v. *Lucas*, 196 La. 299, 199 So. 126, where a license tax on collecting money on copyrighted music books was held invalid, the Supreme Court of Louisiana, after pointing out that the gross business of the defendant was exceeded by the tax charged, said (p. 127):

"A statute which purports to levy a license tax upon a particular business or occupation, but which makes the tax so exorbitant that no one can pay it and carry on the business or occupation profitably, does not in fact license the business or occupation, but undertakes to abolish it. Such a statute is violative of the Fourteenth Amendment of the Constitution of the United States insofar as it deprives anyone of his right to carry on a lawful business or occupation."

The *Lucas* case is particularly significant since it is apparent that the evidence presented as to the business done by the affected business man as compared to the amount of the tax imposed is the same type of evidence as appears in the record in the case at bar. In addition, it would appear that the testimony of only one affected business man was held sufficient in the *Lucas* case to warrant the Court's determination that the entire business was in fact confiscated, whereas in this case the Court can see in the record the effect of the tax on a substantial cross-section of the affected industry.

The seriousness and sincerity of the appellants' contentions that the amendment to the Motor Vehicle Act, which increases the tax on truckers to the point where their businesses can no longer be profitable, violates the due process

clauses of the Constitution, is demonstrated by the following quotation found in 11 Am. Jur., 1147:

> "The right to earn a livelihood by following the ordinary occupations of life is protected by the Constitution; such protection is particularly found in the guarantees of the Fourteenth Amendment. It has been said that the preservation of such right is the principal purpose of the Constitution itself and is of the very essence of the personal freedom and opportunity that it was the purpose of the Fourteenth Amendment to secure. The right is fundamental, natural, inherent, and inalienable, and is one of the most sacred and most valuable rights of a citizen. A person's business, occupation, or calling is 'property' within the meaning of the constitutional provisions as to due process of law and is also included in the right to liberty and the pursuit of happiness."

The Supreme Court of the United States has established a line of cases holding that a confiscatory tax is unconstitutional. When dealing with Federal statutes, of course, the due process clause of the 5th Amendment, instead of the due process clause of the 14th Amendment, which applies to State laws, is the basis used by the Courts for their holdings. The situation, however, and the interpretation of the law is identical and certainly directly in point in this case.

In the case of *Nichols* v. *Coolidge*, 274 U.S. 531, wherein the Supreme Court of the United States held a portion of the Federal Estate Tax Law unconstitutional, the Court said (p. 542):

> "This Court has recognized that a statute purporting to tax may be so arbitrary and capricious as to amount to confiscation and offend the 5th amendment."

Although, in the case of *Tyler* v. *The United States*, 281 U.S. 497, the Statute was held valid, the Court said (p. 504):

> "The point made is that the tax is so arbitrary and

> capricious as to amount to confiscation, and, therefore, to result in a deprivation of property without due process of law. . . . The possibility that a Federal statute passed under the taxing power may be so arbitrary and capricious as to cause it to fall before the due process of law clause of the 5th amendment must be conceded."

That the taxing power of the legislative branch of the Government is limited by the due process clauses of the constitution is obvious from the decisions above quoted and others; where, as in the case at bar, the fact of confiscation has been established by competent evidence and the Trial Court has so held, these decisions demonstrate beyond doubt that as a matter of law that holding must be sustained.

We are obliged to point out to the Court that many of the cases which appear at first blush to be in point are in fact no authority for the case at bar. The books are full of cases where states and municipalities have levied license fees for the sole purpose of regulation and not for the raising of revenue. Although the Motor Vehicle Act of the State of Illinois is primarily a regulatory measure, it is obvious that the tax imposed by Section 9 thereof is in fact a revenue tax as opposed to a regulatory license fee. Indeed, that section of the Statute here complained of first levies a flat $5.00 license fee, which is obviously a license under the police power, and then in the same section and in addition levies "for the use of the public highways a tax." There is no question that under the police power the legislature may charge a fee which repays the state for its expense in connection with the enforcement of the Act, and it has even been held many times that if, under the police power, the license fee charged *incidentally* yields a revenue that of itself does not make the Act unconstitutional, but where, under the police power, substantial revenue is sought to be raised such revenue taxes have always

been held unconstitutional. The Supreme Court of Illinois so held in *People* v. *Wilson,* 249 Ill. 195, 94 N.E. 141, where at page 202 it is said relative to the Act seeking to regulate itinerant vendors of drugs:

> "It has often been held that if the legislature, under the guise of regulation, fixes a license fee at so exorbitant an amount as to operate as a prohibition upon the business or calling sought to be regulated and thereby to create a monopoly, the effect would be to deprive the citizen of his liberty and of his property under the constitution, and that it would be within the power of the courts to declare such a statute invalid. (citing cases). While it is no objection to a tax imposed under the police power that it may incidentally yield a revenue, still the tax cannot be made so heavy on a legitimate occupation as to create a monopoly, or, in effect, prohibit the pursuit of the occupation."

So, too, the Supreme Court of Illinois, in the case of *Price* v. *The People,* 193 Ill. 114, 61 N.E. 844, involving the licensing of employment agencies, said at page 120:

> "What amount the applicant for a license shall be required to pay as a license fee is plainly committed to the General Assembly for determination, and the action of that department of the State government is conclusive, except, beyond serious doubt, it is manifest the amount of the fee has been in any particular instance established, not with regard to the purpose of regulation of the occupation with the view of protecting the public welfare, but with the real purpose to raise revenue under the guise of the police power, or to subvert the proper exercise of that power to the prohibition, by means of oppressive license fees, of the right of the citizen to exercise a lawful calling, in violation of the constitutional guarantees against the destruction of the liberty and property right of a citizen."

In view of the difficulty that Courts have had in determining whether levies were separate revenue measures or taxes levied as a part of and under the guise of regulatory

measures, and in view of the fact that the amendment to the Illinois Motor Vehicle Act might be deemed to be either, we submit that the cases cited heretofore have demonstrated that, whichever it is, this tax is necessarily violative of the due process clause in that it confiscates and prohibits the entire trucking industry within Illinois.

We must here point out to the Court what must be obvious to the Court, namely: that the trucking industry is a legitimate, useful and harmless occupation. The entire economy of the State of Illinois, and, indeed, of the United States, is largely dependent upon the continued operation of trucks on the public highways. Many communities could not exist without trucks. The very food on our tables, the materials from which shelters are built, steel, machinery and almost every imaginable type of product is moved from place to place by the trucking industry. That the industry may be regulated in the interests of the public has never been denied, and almost since the invention of motor vehicles they have been regulated as to speed and safety measures to protect the public, but certainly it cannot be in good conscience claimed that the industry under a police power and for the protection of the public can legitimately be prohibited. Harmful businesses may be prohibited, and if they may be prohibited under the police power, then they may be prohibited by excessive taxation, but as demonstrated above, the Courts have uniformly held that a harmless and useful business may neither be prohibited under the police power nor by taxation. The case of *Fiscal Court of Owen County et al* v. *F. & A. Cox Company, supra,* demonstrates this point in detail. The Illinois Supreme Court in the case of *People* v. *Brown,* 407 Ill. 565, 95 N.E. 2d 888, wherein the regulation of plumbers was held invalid, is a demonstration that the Courts of Illinois followed the theory of the Kentucky Court, although the Courts in Illinois had never been obliged to hold a

revenue act invalid because the legislature had never been so unmindful of the rights of its citizens as to adopt a confiscatory tax heretofore. The Illinois Court in the *Brown* case said at page 572:

"Section 1 of Article 2 of the State constitution declares all men have certain inherent and inalienable rights, three of them being the right to life, the right to liberty and the right to pursue happiness. Section 2 of the same Article declares none of three named rights, plus the right of property, shall be taken from a person except by due process of law, *i. e.* the law of the land. A person's business, profession, trade, occupation, labor, and the avails from each constitute 'property' envisioned in the two sections. The right to follow any of those activities is 'liberty' as also envisioned therein. Those rights guaranteed by the constitution are not unqualified rights to be exercised regardless of harm to others at all times or places. There must be a yielding, partially or wholly, thereof for the common good of society when the State so commands through the *rightful* use of its inherent police power to secure either the public health, morals, safety, comfort or common welfare.

"That power is great and reaches far, but its use is hedged with restrictions. The fact the legislature has invoked the police power for regulatory purposes directed against an activity such as a trade, etc., is not conclusive that the power was lawfully exercised. Whether it was lawfully used in a given instance is a judicial problem belonging exclusively to the courts. (Citation). The restraint imposed upon a legitimate activity by an exercise of the police power for regulatory purposes must be a reasonable one, be for the protection of the public health, morals, safety, comfort or common welfare, and also be reasonably adapted to attain the objective intended. (Citations) Statutes enacted under that power must be construed, if possible, so as to avoid infringing any of those basic rights. (Citation) The legislature cannot enact a lawful statute by invoking the police power on the pretense of protecting public interests when the actual objec-

> tive of the statute constitutes an arbitrary interference with private business, or imposes unusual and unnecessary restrictions upon lawful occupations; if such statute does not tend to preserve the public health, safety or welfare, it is void as an invasion of individual property rights.".

This case demonstrates that the right to engage in a useful business such as the trucking business is a right which is guaranteed by the Constitutions of Illinois and of the United States. To allow a tax enactment, and particularly a tax enactment written into a regulatory measure, to stand as the law of the State of Illinois, when it in fact deprives the citizens of the State of the right to engage in a useful occupation, which occupation is vital to the economic welfare of the people of the State, would serve only to make a mockery of the Constitutional guarantees of property, liberty and pursuit of happiness. Cases such as these, holding that under the police power it is unconstitutional to prohibit a legitimate, useful and harmless business or occupation, certainly are the law of the land. Certainly, the legislature may not, under the guise of a revenue measure, prohibit such a business or occupation where it may not do so directly. Dealing with the Federal Congress, it is said in 51 Am. Jur., 98:

> "Where the Federal Congress, which has no general police power, has no power to regulate a particular subject matter directly, it cannot do so under the guise of taxation."

It necessarily follows that the State legislature, although it has a general police power, but does not have the power to prohibit a legitimate business under that police power is, within the scope of prohibitory enactments, identical to the Federal Congress. Where the legislature cannot prohibit a particular business directly, it cannot do so under the guise of taxation.

It should here be pointed out that we are not inquiring into the motives of the legislature in passing the excessive tax on trucks. It is elementary that the motives of the legislature cannot be questioned. However, irrespective of the legislature's motives, the fact is that it has here passed a tax so excessive in amount that, as shown by the evidence in this record, it necessarily will prohibit the trucking industry. The Trial Court having determined the fact issue that the industry is prohibited and confiscated, it is the province of this Court now to determine whether, as a matter of law, the Trial Court erred in holding the Act unconstitutional. We submit that from the cases cited it is clear that such a prohibitory tax does violate the due process clause of the Federal Constitution, and is, therefore, unconstitutional.

As suggested above, the witnesses who here testified constitute a cross-section of the entire truck industry with the exception of the large line haul carriers. It could be argued, therefore, that perhaps those large concerns might not be affected by the tax as are the smaller truckers. Assuming this to be the fact, then the elimination of the smaller operators from the trucking industry by operation of the tax would tend to create in those large carriers a monopoly in the trucking business. Confiscation of an industry by a prohibitive tax is not limited to the entire wiping out of the industry, but, under our law, if a large segment of an industry can no longer profitably operate and a tendency toward monopoly is thus produced by the legislative enactment, such enactment is by reason thereof just as invalid as if the entire industry were wiped out. The Illinois Court, in the case of *People* v. *Kastings*, 307 Ill. 92, 138 N.E. 269, in considering the validity of sections of the Illinois Motor Vehicle Law having to do with the bonding of taxicabs, said at page 108:

"It is apparent, without any argument, that Section

42a of the Statute, providing for such bonds and insurance as security, if allowed to stand as enacted, would permit discrimination between the two classes of taxicab owners,—those giving bonds and those providing insurance,—and in addition to that would make it practically impossible for any taxicab owner to comply with the statute by the giving of a bond with two or more personal sureties. It would also tend to create a monopoly in the taxicab business because of its tendency to prohibit many efficient, honest and careful operators of taxicabs owning their own machines from further pursuing their occupation because of the fact that they may be unable to bear or pay the high rates for insurance or for surety bonds that may be required of them. For all of the reasons aforesaid we hold that the entire Section 42A is void."

The only possibility that the trucking industry could exercise to avoid confiscation under the terms of the amendment to the Motor Vehicle Act and in view of the testimony present in this record, would be to pass the additional license costs on to the consumers. This could be done only if the truckers engaged in hauling for hire could raise their charges to the public for such service. The record discloses by uncontradicted testimony that such raises of rates are impossible. The rates of line haul carriers are fixed by a Rate Bureau subject to the approval of the Interstate Commerce Commission and are more or less uniform throughout the entire Midwest area. If Illinois truckers, by reason of higher license fees, were given a higher rate, their business would necessarily go to carriers from other states operating at lower rates (R. 50).

The short haul carriers have virtually no voice in the construction of the through overhead rates in interstate commerce. The line haul carriers establish the rates through the Rate Bureaus, and the short haul carrier, who actually makes the delivery, simply participates in the line haul rate and is forced to take what the line haul operator wishes to give (R. 84).

The intrastate rates are not regulated, but are limited by very keen competition and by competition not only with other intrastate common carriers, but also with private carriers and contract carriers, and the increases, therefore, cannot be passed on to the customer. (R. 84).

From the testimony outlined above, it is clear that the tax increases could not be passed on to the public; and, as pointed out above, since these increases cannot be assumed by the truckers without making their operations unprofitable, it necessarily follows that the industry is confiscated by the action of the legislature. With this fact situation existing, we submit, in view of the authorities cited, that the amendments to the Illinois Motor Vehicle Law increasing the tax rates to the point that they are prohibitory is unconstitutional and void as depriving those citizens comprising the truck industry of their right to engage in a legitimate and useful occupation, thus depriving them of their property and their liberty as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

III.

The 1951 Amendment contains numerous arbitrary, inconsistent, vague and uncertain classifications in violation of Section 1, Amendment XIV of the Constitution of The United States.

In previous portions of this brief appellants have urged that the 1951 Amendment to the Illinois Motor Vehicle Law is discriminatory in its operation and violates various provisions of the United States Constitution. The subject of discrimination viewed from several standpoints is treated in considerable detail in Point I of this brief, relating to the Commerce Clause. It is not our purpose to repeat here portions of that argument relating to discrimination. It should only be noted that the broad issue of discrimination

with all its ramifications appears not only in the argument under the Commerce Clause but throughout this brief.

A first reading of the 1951 Amendment to the Illinois Motor Vehicle Law reveals the fact that it contains a great number of arbitrary, inconsistent, vague and confusing terms and classifications. We shall, in the following pages, point out to the court the more important of these. Before doing so, however, we propose to outline briefly the respects in which we contend these terms and classifications are violative of the United States Constitution and we shall review some of the more important cases on the subject.

Throughout its history, this court has been called upon many times to apply Section 1, Amendment XIV of the Constitution of the United States, the Equal Protection Clause. In treating the subject of the Equal Protection Clause as it applies to classification within a statute, both United States Supreme Court cases and cases from state appellate courts are substantially uniform in their interpretation of that clause.

In *Gulf, C. & S. F. R. Co.* v. *Ellis*, 165 U.S. 150, the court had before it a Texas statute which provided that if any person had any of certain specified claims against a railroad company and should present his verified claim to an agent of the railway, and the claim should not be paid or satisfied within thirty days, the claimant, upon finally establishing his claim in court, would be entitled to reasonable attorney's fees not to exceed $10.00. That statute applied only to railroads.

This act was held to be in violation of the Equal Protection of the Laws Clause and Mr. Justice Brewer in his opinion used language which this court has seen fit to quote on numerous occasions. At p. 155 the opinion reads:

> "But it is said that it is not within the scope of the 14th Amendment to withhold from states the power of

classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, (citations), yet it is equally true that such classification cannot be made arbitrarily. The state may not say that all white men shall be subjected to the payment of the 'attorneys' fees of parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

Likewise, in the case of *Truax* v. *Corrigan*, 257 U.S. 312, this court was presented with another statute alleged to violate the Equal Protection Clause. That enactment by the Arizona legislature declared that the courts in that state were without power to enjoin picketing of an employer, unless violence was used. The court, in an opinion by Mr. Chief Justice Taft, declaring this statute violated the Equal Protection Clause for the reason that it constituted arbitrary class legislation unreasonably discriminatory against employers said, (P. 337):

"Classification must be reasonable. As was said in *Gulf, C. & S. F. R. Co.* v. *Ellis*, 165 U.S. 155, 41 L. ed. 668, 17 Sup. Ct. Rep. 255, classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' As was said in *Magoun* v. *Illinois Trust & Sav. Bank*, 170 U.S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct. Rep. 594: 'The rule . . . (*i. e.*, of the equality clause) is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on

persons merely as such, but on persons according to their relations.' The same principle is repeated and enforced in *Southern R. Co.* v. *Greene*, 216 U.S. 400, 417, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247. 'While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis."

In the later case of *Frost* v. *Corporation Commission of Oklahoma*, 278 U.S. 515, the Equal Protection Clause arose in connection with an Oklahoma statute. In substance, that statute provided that cotton ginning businesses were public utilities and, as such, must obtain a permit from the state corporation commission in order to operate. The challenged portion of the statute provided that co-operatives need not make a showing of public necessity in order to obtain such a permit. The discrimination in the statute was that individuals and ordinary business corporations were required to make a satisfactory showing of public necessity as a condition to obtaining a permit to operate while co-operatives were not.

The court, speaking through Mr. Justice Sutherland, declared this was an arbitrary and unreasonable classification which rendered the challenged portion of the statute unconstitutional, stating at P. 521:

"Is, then, the effect of the proviso to deny appellant the equal protection of the laws within the meaning of the 14th Amendment? As the proviso was construed and applied by the commission and by the court below, its effect is to relieve all corporations organized under the Act of 1919 from an onerous restriction upon the right to engage in a public business which is imposed by the statute upon appellant and other individuals as well as corporations organized under general law, engaging in such business. That a greater

> burden thereby is laid upon the latter than upon the former is clear. Immunity to one from a burden imposed upon another is a form of classification and necessarily results in inequality; but not necessarily that inequality forbidden by the Constitution. The inequality thus prohibited is only such as is actually and palpably unreasonable and arbitrary. (Citation)

The Court then went on to hold that because this statute applied unequally to corporations, individuals and co-operatives without justification, it violated the Equal Protection of the Laws Clause. The court labelled the statute "arbitrary, because based upon no real or substantial differences having reasonable relation to the subject dealt with by the legislation." (pp. 524-5)

Speaking with reference to the validity of the Hospital Authorities Act, the Illinois Supreme Court employed similar language to that used by the court in the above cited case. Thus in the case of *Grennan* v. *Sheldon,* 401 Ill. 351, 82 N.E. 2d 162, at 357:

> "The general rule is well settled that a classification which is based on a rational difference of situation or condition existing in the persons who are the subject of such classification is not within the constitutional prohibition of special legislation. (Citation) However, the class of persons in whose favor the legislation is enacted must be composed of individuals possessing in common some disability, attribute or qualification which distinguishes such class from others not so favored. (*Jenson* v. *Wilcox Lumber Co.,* 295 Ill. 294, 298). And this disability, attribute or qualification must bear some reasonable relationship to the purpose or object of the act. In other words, the difference of situation or condition must be a rational one in order to justify the legislative classification."

From the foregoing it is abundantly clear that, although the legislature has power to classify, such classification

cannot be arbitrary or without rational basis. As stated by Mr. Justice Brewer in *Gulf, C. & S. F. R. Co.* v. *Ellis, supra,* Page 159:

> "Arbitrary selection can never be justified by calling it classification."

There must be that "reasonable basis for differentiation" which the court referred to in *Continental Baking Co.* v. *Woodring,* 286 U.S. 352, 370. Moreover, that differentiation must serve the purposes of the statute in question and can not be justified merely because there is some conceivable differentiation between the persons or items classified under the statute.

As has been previously pointed out, weight was made the basis for the license fee schedule in the 1951 Act. In the trial court and in the Supreme Court of Illinois, appellants pointed out to the court classifications, several of which relate to weight, which are arbitrary, inconsistent and lack uniformity. The following are the more important of them.

A reading of Sections 9 (h) and 9 (i) of the Act clearly reveals that certain four-wheeled vehicles fall within both sections.

Section	Weight	Wheels	1954 Tax Rate
9 (h)	More than 24,000 pounds	4	$352
9 (i)	24,000 to 30,000 pounds	4 or more	$588

A four-wheeled vehicle having a gross weight of, say, 26,000 pounds would fall within the provisions of either section, and no one could determine whether such a vehicle should pay the smaller or greater tax.

Illustrating the inconsistency and arbitrariness of the schedule, a four-wheeled truck having a gross weight in excess of 30,000 pounds would fall only within Section

9(h) and would, therefore, pay the smaller tax. Witnesses Houska and Kennedy, testifying on behalf of the appellees, stated that such trucks do travel the Illinois highways. (R. 164, 166). Section 9 (i) applies to four-wheeled trucks whose gross weight is between 24,000 and 30,000 pounds, and under this section the owner of a vehicle weighing over 30,000 pounds pays less than the owner of a vehicle weighing less than 30,000 pounds!

Similarly, a reading of Section 9 (i)-3 and 9 (i)-4 indicates that ten-or-more wheeled vehicles having a gross weight in excess of 50,000 pounds but not exceeding 72,000 pounds fall within both sections.

Section	Weight	Wheels	1954 Tax Rate
(9) (i)-3	Over 50,000 pounds	8 or more	$1245
(9) (i)-4	50,000-72,000 pounds	10 or more	$1588

These inconsistencies in the schedule may be the result of hasty or careless draftsmanship, but whatever the reason for these unexplainable classifications in the fee schedule, their vice lies in the fact that they do not operate uniformly upon the class to which they apply and they discriminate unreasonably and unfairly.

It is obvious that the greater the number of wheels on a vehicle the more the load is distributed on the highway and the less damage will be done to the highway. Witness Redman so testified (R. 108). Nevertheless, under the 1951 Amendment an eight-wheeled vehicle weighing 60,000 pounds pays a smaller registration fee than a ten-wheeled vehicle of the same gross weight.

The 1951 Amendment provides a special and lower rate of tax for vehicles "used for transporting more than seven passengers entirely within the territorial limits of a single municipality, or a single municipality and municipalities contiguous thereto or a close radius thereof and equipped

with hydraulic shock absorbers and whose rates are subject to the regulation of the Illinois Commerce Commission." Following is a comparison of this special bus schedule and the schedule of fees for trucks of the same weight:

Busses		Trucks	
Weight	Tax 1954	Weight	Tax 1954
12-14000#	$ 45	12-14000#	$114
14-16000	70	14-16000	141
16-20000	105	16-20000	216
20-24000	145	20-24000	352
24-36000	195	24-30000	588
		30-36000	810

Almost every one of the witnesses who own and operate trucks testified that some or all of his trucks are equipped with hydraulic shock absorbers. (R. 55, 62, 66, 72, 76, 90, 97) The fact that rates of certain busses are subject to regulation by the Illinois Commerce Commission does not mean that the public interest in their operation is any greater nor less than in the operation of trucks whose rates are controlled by the Interstate Commerce Commission. Nor does rate regulation by the Illinois Commerce Commission make the damage done to the highways by these buses any less than that done by trucks of comparable weight. Witnesses Wagner, Ryan and Valentine testified to such rate regulation with respect to their trucks. (R. 55, 76, 94)

Numerous witnesses, engaged in the trucking industry, testified in behalf of the plaintiffs to the effect that some or all of their trucks operate solely within a city or within its immediate vicinity. Witness Walter Klassner of the Alton Boxboard Company stated that an important part of their operation was inter-plant which was entirely on their own property and not on the public roads (R. 61), that another operation was strictly within the city of Alton (R. 62).

Witness Marvin Wagner testified that 75% of his concern's business was within the city limits of St. Louis, Missouri (R. 55). Gerald Adams of the Elgin Storage and Transfer Company related that approximately 70,000 miles a year of that corporation's operation was within the corporate limits of Elgin, Illinois, where twenty of its units operate exclusively. (R. 83) Witness A. D. Church indicated that 90,000 miles were operated by the Gold Star Motor Service within the municipal limits of Chicago and adjacent municipalities. (R. 87) W. J. Edmonds, general manager of Granite City Steel Company, testified that that corporation had three plants in the immediate vicinity of Granite City—one plant one block away, the other plant four or five blocks away; 80% of the mileage of its fleet was inter-plant or within the plants. (R. 97)

Robert J. Hesselbaum testified that Dumont Cartage Company has some 18 trucks confined to municipalities and operating 125,000 miles per year within them. (R. 89) Witness Lloyd Valentine testified similarly, (R. 95), three of his trucks confined to the City of Aurora operating approximately 35,000 miles per year.

It is evident from the testimony of these witnesses that truck operators whose equipment is confined within the limits of a municipality operate each such truck 3,000 to 10,000 miles per year. These operators are generally engaged in the moving business or are private carriers operating between plants or warehouses. Their mileage is small, understandably. The reports of the bus operation in Aurora, Elgin, Rockford and Chicago, Illinois, (plaintiffs' exhibits 1-4 inclusive; R. 209-219; offered at R. 117) indicate that the average bus travels well in excess of 30,000 miles a year within a city, and accordingly derives far greater benefit from the highways than do the truck operators. Nevertheless, the comparison of truck and bus fees charted above shows convincingly that a truck pays a fee many times that of a bus of the same gross weight.

Certain vehicles are omitted entirely from the Act: Six or more wheeled vehicles under 30,000 pounds are not covered by a provision of the Act. Since no tax is imposed on such vehicles, the Act discriminates unfairly and unreasonably in their favor and against all other classes of vehicles.

There is no provision for the owner of a tractor only. Section (j) of the Act requires that the owner of a tractor shall pay the fee of the tractor plus one semi-trailer. One of the plaintiffs in this case, Cecil Kain, testified that he owns only a tractor but is obliged by the Secretary of State's Office to lease a semi-trailer and pay the tax thereon in order to obtain a license for his tractor. (R. 69) We submit that a tractor unit alone is not covered by the Act, which results in an arbitrary discrimination in favor of such vehicles and against other classes of vehicles.

In addition, we submit that the terms "gross weight" and "maximum load" are vague, uncertain and incapable of understanding without the assignment of an arbitrary definition.

Some point has been made of the fact that these phrases have been in the Act for thirty-two years. Never during those thirty-two years has the vagueness of these terms been challenged. If there was freedom from confusion during those thirty-two years, it was because the Illinois Secretary of State, arbitrarily and without a guide from the legislature, placed a meaning on those terms. In so doing, the Secretary of State, we submit, was unlawfully exercising legislative authority and his continued exercise of that authority gives rise to unreasonable discrimination. No estoppel against affected persons now raising the illegality of the delegation or the vagueness and uncertainty of the terms can be asserted by appellees.

The witness, Redman, an expert in the field of truck

engineering and design, discussed the term "manufacturer's rated capacity," (R. 109) and defined it as a scientific determination by engineers of the maximum load that trucks can safely carry and insure maximum life. The witness also stated that he has seen trucks loaded a 1000 per cent over and above the manufacturer's rated capacity. (R. 110) Obviously, therefore, the terms could refer to the manufacturer's rated capacity *or* the maximum load that could possibly be hauled by a given truck *or* the maximum load which any owner might care to place on his truck. Any one of these three meanings could be adopted by the Secretary of State in carrying out the provisions of the Motor Vehicle Law. It is apparent that the Secretary of State's Office not only could adopt any one of several meanings, but that it could, from time to time, change its mind and adopt another meaning for the term; indeed, the record shows that in another instance the Secretary of State did so change his mind. (R. 168) Prior to 1946, applicants for licenses were required to state the number of wheels on their vehicles. Arbitrarily, the Office of the Secretary of State assumed that there were but two wheels to an axle, (R. 168) although witness, Redman, testified there are sometimes as many as eight wheels on one axle. (R. 109) Although the new amendment to the Motor Vehicle Act still bases the tax on the "number of wheels", the Secretary of State now issues application forms and bases the license fee schedule on the "number of axles" instead of the "number of wheels." (R. 169) We suggest that the terms "maximum load" and "gross weight" are so vague and uncertain as to render them incapable of clear understanding and that as such they violate the Equal Protection Clause of the Constitution.

We, likewise, suggest that the term "like exemption and privileges" appearing in Section 20 of the Act as amended is similarly vague, uncertain and incapable of clear understanding.

In Section 9 of the Act which makes a separate classification of certain busses, the term municipalities and/or "a close radius thereof" appear. A similar term was discussed by the Supreme Court of Georgia in *Case-Fowler Lumber Company* v. *Winslett,* 168 Ga. 808, 149 S.E. 211; where those engaged in the manufacture of lumber products in or near cities of a certain size were subjected to a tax.

The court said at page 213:

> "The use of the word 'near' in making the classification subjecting certain persons and corporations designated by the Act as 'in or near cities,' as contained in paragraph 66 of the Tax Act, necessarily leaves to the tax officer the discretion of determining in many instances that some may be liable and others may not be liable, depending entirely upon the circumstances of each particular case; and for this reason the tax imposed by this Section is invalid and unenforcible."

Obviously, the words "close radius" in the Motor Vehicle Law amendment and "near" in the Georgia statute have identical meanings. Both are indefinite and leave to the Secretary of State the discretion of placing a particular vehicle in a certain class which carries a lower tax while at the same time placing a similar vehicle in another class which carries a higher tax.

Also appearing in section 9 of the 1951 Act is the phrase "agricultural pursuits." This term, we submit, is likewise vague and uncertain.

A farmer who butchers a steer and sells a side of beef to a neighbor is undoubtedly engaged in an agricultural pursuit. If such butchering is an agricultural pursuit, the Secretary of State could with equal force determine that a meat packer is also engaged in butchering and thus in an agricultural pursuit. Similarly, if a farmer who devotes a field to the growing of flowers is still engaged in an agricultural pursuit, the Secretary of State might determine that any nurseryman is engaged in agriculture,

and could even logically say that any florist who grew flowers was engaged in an agricultural pursuit. In view of the manner in which the Secretary of State translated wheels to mean axles, as pointed out above, we submit that he could also translate the term "agricultural pursuit" into any number of meanings. The foregoing illustrates very forcibly the lack of uniformity and absence of reasonable classification which is inherent in the 1951 amendment.

Not only is there an arbitrary and unreasonable discrimination against trucks in favor of certain busses, but even within the classification which the statute establishes for licensing trucks, there are any number of vague, uncertain, inconsistent and nonuniform differentiations which can have no relation to the purposes of the Act.

We submit, therefore, that because of these defects the 1951 Amendment is contrary to Section 1, Amendment XIV, of the Constitution of the United States and unconstitutional.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the final judgment of the Supreme Court of the State of Illinois should be reversed.

SAM ALSCHULER,
FRANK R. REID, JR.,
RALPH C. PUTNAM, JR.,
ROBERT B. HUPP,
WILLIAM C. MURPHY,
Attorneys for Appellants.

PUTNAM, JOHNSON & ALSCHULER,
32 Water Street,
Aurora, Illinois.
REID and OCHSENSCHLAGER,
6 Downer Place,
Aurora, Illinois,
Of Counsel.

APPENDIX "A"

An Act to amend Sections 9, 11a and 20 and to repeal Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (k) and 9 (l) of the "Motor Vehicle Law", approved June 30, 1919 as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Sections 9, 11a and 20 of the "Motor Vehicle Law", approved June 30, 1919, as amended, are amended to read as follows:

SECTION 9. All owners of vehicles of the second division as described in Section 2 of this Act, which are designed or equipped or used for carrying freight, goods, wares or merchandise, and all owners of vehicles of said first division which have been remodeled and are being used for such purposes, and all owners of self-propelled vehicles operated as tractors to the weights of which are added the gross weights of the heaviest semi-trailers with their loads used with such tractors, and all owners of vehicles of said second division which are used for carrying more than seven persons, shall pay to the Secretary of State for each calendar year from and after January 1, 1936, for the use of the public highways of this State, a license fee of five dollars ($5.00) for each such vehicle.

Every application for registration of a truck subject to regulation under the provisions of "An Act in relation to the regulation of the operations of trucks designed or used for the transportation of property", approved July 25, 1939, as amended, shall, be accompanied by proof that a valid and unrevoked certificate of safety has been issued for each such truck. No certificate of registration or license plates shall be issued by the Secretary of State to the owner or any such truck unless such proof accompanies such application.

Every owner of a motor vehicle subject to the provisions of this section shall pay to the Secretary of State for each calendar year from and after January 1, 1952, for the use of the public highways a tax at the following rates, to-wit:

(a) Vehicles having a gross weight of three thousand (3000) pounds and less, including the weight of the vehicle and maximum load, $5.00.

(b) Vehicles having a gross weight of more than three thousand (3000) pounds and not more than eight thousand (8000) pounds, including the weight of the vehicle and maximum load, $15.00 until January 1, 1954, and thereafter $21.00.

(c) Vehicles having a gross weight of more than eight thousand (8000) pounds and not more than ten thousand (10,000) pounds, including the weight of the vehicle and maximum load, $41.00 until January 1, 1954, and thereafter $58.00.

(d) Vehicles having a gross weight of more than ten thousand (10,000) pounds and not more than twelve thousand (12,000) pounds, including the weight of the vehicle and maximum load, $62.00 until January 1, 1954, and thereafter $87.00.

(e) Vehicles having a gross weight of more than twelve thousand (12,000) pounds and not more than fourteen thousand (14,000) pounds, including the weight of the vehicle and maximum load, $81.00 until January 1, 1954, and thereafter $114.00.

(f) Vehicles having a gross weight of more than fourteen thousand (14,000) pounds and not more than sixteen thousand (16,000) pounds, including the weight of the vehicle and maximum load, $101.00 until January 1, 1954, and thereafter $141.00.

(g) Vehicles having a gross weight of more than sixteen thousand (16,000) pounds, and not more than twenty thousand (20,000) pounds, including the weight of the vehicle and maximum load, $154.00 until January 1, 1954, and thereafter $216.00.

(h) Four wheel vehicles having a gross weight of more than twenty thousand (20,000) pounds, and vehicles having more than four wheels, having a gross weight of more than twenty thousand (20,000) pounds, and not more than twenty-four thousand (24,000) pounds, including the weight of the

vehicle and maximum load, $251.00 until January 1, 1954, and thereafter $352.00.

(h-1) Four wheel vehicles designed and used for the carrying of more than seven passengers and equipped with balloon tires and hydraulic shock absorbers and having a gross weight of more than twenty-four thousand (24,000) pounds and not in excess of thirty-six thousand (36,000) pounds, including the weight of the vehicle and maximum load, $389.00 until January 1, 1954, and thereafter $545.00.

(i) Four or more wheeled vehicles having a gross weight of more than twenty-four thousand (24,000) pounds and not in excess of thirty thousand (30,000) pounds, including the weight of the vehicle and maximum load, $420.00 until January 1, 1954, and thereafter $588.00.

Six or more wheeled vehicles having a gross weight of more than thirty thousand (30,000) pounds and not in excess of thirty-six thousand (36,000) pounds, including the weight of the vehicles and maximum load, $579.00 until January 1, 1954, and thereafter $810.00.

Six or more wheeled vehicles having a gross weight of over thirty-six thousand (36,000) pounds, but not exceeding forty-one thousand (41,000) pounds, including the weight of the vehicle and maximum load, $635.00 until January 1, 1954, and thereafter $890.00.

(i-1) Six or more wheeled vehicles having a gross weight of more than forty-one thousand (41,000) pounds, but not exceeding forty-five thousand (45,000) pounds, including the weight of the vehicle and maximum load, $700.00 until January 1, 1954, and thereafter $980.00.

(i-2) Eight or more wheeled vehicles having a gross weight of more than forty-five thousand (45,000) pounds, but not exceeding fifty thousand (50,000) pounds, including the weight of the vehicle and maximum load, $784.00 until January 1, 1954, and thereafter $1098.00.

(i-3) Eight or more wheeled vehicles having a gross weight of over fifty thousand (50,000) pounds, including the weight of the vehicle and maximum load, $889.00 until January 1, 1954, and thereafter $1245.00.

(i-4) Ten or more wheeled vehicles having a gross weight of more than fifty thousand (50,000) pounds, but not exceeding seventy-two thousand (72,000) pounds, including the weight of the vehicle and maximum load, $1134.00 until January 1, 1954, and thereafter $1588.00.

(j) A self-propelled vehicle operated as a tractor and one semi-trailer shall be considered as one vehicle in computing the above license fees. A semi-trailer used with any device for converting it to a trailer or attached to a leading trailer or semi-trailer shall be licensed as a trailer.

(k) Each additional semi-trailer to be used with a tractor licensed as above, $5.00.

(l) Tractors, traction engines or other similar vehicles used for hauling purposes, except as hereinafter provided, shall pay the same fees according to their weight as hereinbefore required in this section of other vehicles. All owners of trailers used with a motor vehicle shall pay to the Secretary of State for each calendar year from and after January 1, 1952, flat weight taxes for the use of the public highways of this State at the following rates to-wit:

(1) Trailers having a gross weight of 2,000 pounds and less, including the weight of the trailer and maximum load, $1.00.

(2) Trailers having a gross weight of more than two thousand (2,000) pounds, and not more than five thousand (5,000) pounds, including the weight of the trailer and maximum load, $15.00 until January 1, 1954, and thereafter $21.00.

(3) Trailers having a gross weight of more than five thousand (5,000) pounds, and not more than ten thousand (10,000) pounds, including the weight of the trailer and maximum load, $44.00 until January 1, 1954, and thereafter $61.00.

(4) Trailers having a gross weight of more than ten thousand (10,000) pounds, and not more than fifteen thousand (15,000) pounds, including the weight of the trailer and maximum load, $79.00 until January 1, 1954, and thereafter $111.00.

(5) Trailers having a gross weight of more than fifteen thousand (15,000) pounds, and not more than twenty thousand (20,000) pounds, including the weight of the trailer and maximum load, $125.00 until January 1, 1954, and thereafter $175.00.

(6) Trailers having a gross weight of more than twenty thousand (20,000) pounds, and not more than thirty-two thousand (32,000) pounds, including the weight of the trailer and maximum load, $557.00 until January 1, 1954, and thereafter $780.00.

(7) Trailers having a gross weight of more than thirty-two thousand (32,000) pounds, including the weight of the trailer and maximum load, $557.00 until January 1, 1954, and thereafter $780.00.

Two axle vehicles which are designed and used for transporting more than seven passengers entirely within the territorial limits of a single municipality or a single municipality and municipalities contiguous thereto, or a close radius thereof, are equipped with hydraulic shock absorbers and whose rates for transportation are subject to the regulation of the Illinois Commerce Commission, a tax at the following rates:

(1) Such vehicles having a gross weight of more than twelve thousand (12,000) pounds but not exceeding fourteen thousand (14,000) pounds, including the weight of the vehicle and the maximum load, $45.00;

(2) Such vehicles having a gross weight of more than fourteen thousand (14,000) pounds but not exceeding sixteen thousand (16,000) pounds including the weight of the vehicle and the maximum load, $70.00;

(3) Such vehicles having a gross weight of more than sixteen thousand (16,000) pounds but not exceeding twenty thousand (20,000) pounds including the weight of the vehicle and the maximum load, $105.00;

(4) Such vehicles having a gross weight of more than twenty thousand (20,000) pounds but not exceeding twenty-four thousand (24,000) pounds including the weight of the vehicle and the maximum load, $145.00;

(5) Such vehicles having a gross weight of more than twenty-four thousand (24,000) pounds but not exceeding thirty-six thousand (36,000) pounds including the weight of the vehicle and the maximum load, $195.00.

The registration fee paid by the State of Illinois, or by any county, township, municipal corporation, city, village or incorporated town for each motor vehicle of the second division owned and operated by it, or by any school district for each motor vehicle of the second division owned and operated by it as a school bus, shall be two dollars for each calendar year.

Upon the filing in the office of the Secretary of State of said application and payment of the registration fee as hereinbefore provided, the Secretary of State, or his duly authorized agent, shall, without further fee, assign to such trailer or semi-trailer as described in said application, a distinctive number plate which shall be attached to the rear of the trailer or semi-trailer. Such license plate shall be so attached as not to swing loosely and shall be not less than twenty inches above the surface of the ground. It shall at all times be kept clean from grease and dirt. None of the owners of the vehicles of said second division shall be required to pay the registration fees in section 8 of this Act. Provided, that none of the provisions of this act requiring or prescribing registration shall be construed to include farm tractors, traction engines, threshing machines, clover huller, ensilage cutters, corn shredders, corn sheller, corn grinders, hay presses, portable saw mills, binders, combines, farm machinery and implements, farm wagons, or like vehicles, trailers or semi-trailers used in connection therewith, which are used primarily in the agricultural pursuits of the owner thereof or in connection with the agricultural pursuits of others, or vehicles used exclusively for moving water well drilling outfits, but nothing in this proviso shall exclude from registration truck tractors, trucks, trailers, or semi-trailers engaged in transporting agricultural products. The owner of any motor vehicle of the second division having a corn sheller, a well driller, hay press, clover huller or farm machinery permanently mounted thereon and used solely for transporting the same, shall pay the license fee of five dollars ($5.00), provided in

the first paragraph of this section and shall be exempt from the flat weight tax provided in this Act; Provided, that no such owner shall be entitled to any reduction in such five dollar ($5.00) license fee for the reason that such fee may first become payable during the second half of the calendar year.

Section 11a. Any person, firm or corporation who shall violate any of the provisions of Sections 3a, 9 or 10 shall be subject to a penalty of not less than $10.00, nor more than $100.00 for each offense, together with costs of suit, and shall also be held liable for the payment of all damages caused to any public highway by such violation. Any vehicle used in violation of any section of this Act and thereby causing damage to any public highway shall be subject to a lien for the full amount of all unpaid registration fees, flat weight fees, penalties and damages; provided, however, that such lien shall not release the offender from the full payment of all registration fees, flat weight fees, penalties and damages which may be due from him or be recovered against him in any court of competent jurisdiction and, provided, also that such lien shall not be superior to any chattel mortgage or other lien attaching to such vehicle.

Section 20. Except as herein provided for foreign corporations, the provisions of sections 8, 9, 10, 14, 17, and 27 of this Act, shall not apply to any motor vehicle or motor bicycle owned by non-residents of this State if the owner thereof has complied with the law requiring the registration of motor vehicles or motor bicycles or the names of the owners thereof in force in the city, state, foreign country or province, territory or Federal district of his residence: and the registration number showing the initial or abbreviation of the name of such city, state, foreign country or province, territory or Federal district, is displayed on such vehicle substantially as is provided in section 14 of this Act: Provided, that the provisions of this section shall be operative as to a motor vehicle or motor bicycle owned by a non-resident of this State only to the extent that under the laws of the city, state, foreign country or province, territory or Federal district of his residence, like exemptions and privi-

leges are granted to motor vehicles or motor bicycles duly registered under the laws of and owned by residents of this State. If, under the laws of such city, state, foreign country or province, territory or Federal district, motor vehicles or motor bicycles owned by residents of this State, operating upon the highways of such city, state, foreign country or province, territory or Federal district, are required to pay the registration fee and carry the license plates or pay any other fee or tax to such city, state, foreign country or province, territory or Federal district, the motor vehicles or motor bicycles owned by residents of such city, state, foreign country or province, territory or Federal district, and operating upon the highways of this State shall comply with the provisions of sections 8, 9, 10, 14, 17 and 27 of this Act. Foreign corporations, partnerships and individuals owning, maintaining or operating places of business in this State and using motor vehicles or motor bicycles in connection with such places of business, shall comply with the provisions of sections 8, 9, 10, 14, 17 and 27 of this Act insofar as the motor vehicles and motor bicycles used in connection with such places of business are concerned.

In order to effectuate the purposes of this section, the Secretary of State of Illinois shall have authority to enter into reciprocal agreements with the responsible officers of other states as to licenses, permit fees and flat taxes under which motor vehicles, trucks, tractors, trailers or semi-trailers properly licensed or registered in other states may be operated in this State without an Illinois registration or the payment of permit fees or flat taxes; provided like privileges are accorded to vehicles owned by Illinois citizens when operated in such other states.

Section 2. Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k), and 9 (l), of said Act are repealed.

Section 3. This amendatory act shall be effective January 1, 1952.

Approved July 9, 1951. (Ill. Rev. Stat., Vol. 2, p. 191.)